

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:	:	Chapter 11
	:	
FM COAL, LLC, <i>et al.</i> , ¹	:	Case No. 20-02783 (TOM)
	:	
Debtors.	:	Jointly Administered
	:	

**DISCLOSURE STATEMENT FOR THE FIRST AMENDED JOINT PLAN OF
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Dated: November 25, 2020

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: FM Coal, LLC (1768); Cane Creek, LLC (3207); M. S. & R. Equipment Co., Inc. (3487); Cedar Lake Mining, Inc. (6132); Best Coal, Inc. (2487); and Xinerdy of Alabama, Inc. (3009).

THE DEADLINE BY WHICH EACH HOLDER OF AN IMPAIRED CLAIM ENTITLED TO VOTE ON THE PLAN MUST CAST A PROPERLY COMPLETED AND DELIVERED BALLOT FOR ITS VOTE TO ACCEPT OR REJECT THE PLAN TO BE COUNTED IS JANUARY 5, 2021 AT 5:00 P.M. (PREVAILING CENTRAL TIME), UNLESS EXTENDED.

**Summary of Important Deadlines
(All times are Prevailing Central Time)**

Voting Deadline: January 5, 2021 at 5:00 p.m.

Confirmation Objection Deadline: January 5, 2021 at 4:00 p.m.

Confirmation Hearing: January 25, 2021 at 10:00 a.m.

These dates are subject to extension as provided in the Solicitation Procedures Order (as defined herein).²

² Capitalized terms related to the solicitation procedures for voting to accept or reject the Plan that are not otherwise defined herein, are defined in the Solicitation Procedures Order.

Questions and Answers About the Plan

What are Holders of Claims being asked to approve?

Holders of Claims are being asked to vote to accept the Plan. Pursuant to the Plan, among other things, the Debtors will (1) reorganize its business for the benefit of its creditors, itself and its equity holders, and (2) distribute Cash as described herein and in the Plan.

What will I receive under the Plan?

You will receive a distribution in accordance with the Class in which you have an Allowed Claim or Allowed Equity Interest. Section II of this Disclosure Statement, entitled “Executive Summary,” summarizes the classification and treatment of Claims and Equity Interests under the Plan and also estimates the recovery for each Class.

Who is entitled to vote?

Only Impaired Classes of Claims that are not deemed to have accepted or rejected the Plan are entitled to vote to accept or reject the Plan. See Article I.A of this Disclosure Statement, entitled “Holders of Claims Entitled to Vote,” for a summary of which Classes of Claims are entitled to vote.

What vote is required for approval of the Plan?

Under the Bankruptcy Code, unless the “cram down” provisions of the Bankruptcy Code are used, a plan can only be confirmed if votes to accept the Plan are received from: (1) two-thirds in dollar amount *and* a simple majority in number of claimants for each Impaired Class of Claims; and (2) two-thirds in amount for each Impaired Class of Equity Interests. In addition, the Bankruptcy Code provides that only the votes of those Holders of Claims entitled to vote who actually submit votes on a plan are counted in determining whether the necessary majorities have been received. **YOUR VOTE IS VERY IMPORTANT.**

How do the Debtors recommend that constituents vote?

The Debtors urge Holders of Claims to vote to accept the Plan. The Debtors believe that confirmation and implementation of the Plan is preferable to the other alternatives available to the Debtors, which are described in Article VIII, entitled “Alternatives to Confirmation and Consummation of the Plan,” because the Debtors believe the Plan will provide the greatest recoveries to Holders of Claims. Other alternatives could involve consideration with a lower value, significant delay, uncertainty, and substantial additional administrative costs.

What are the United States federal income tax consequences of the Plan for Holders of Claims?

The tax consequences of distributions under the Plan to the Holders of Allowed Claims will vary based on a number of factors. See Article VII of this Disclosure Statement, entitled “Certain Federal Income Tax Consequences of the Plan,” for a Summary of the federal income tax consequences of the Plan. However, all Holders of Claims are urged to consult their own tax advisors for the federal, state, local, and other tax consequences of the transactions contemplated by the Plan.

How do I vote?

Please use the enclosed ballot to vote to accept or reject the Plan and return the completed ballot to Donlin Recano & Company, Inc. (the “Solicitation Agent”) at the address listed below, or if your securities are

held through an intermediary, to such intermediary. To be counted, your original ballot must be received by the Solicitation Agent no later than the Voting Deadline (as defined in the Solicitation Procedures Order) as described herein. If you hold Claims in more than one Class, you must submit a separate ballot for each Class in which you are entitled to vote. Prior to completing your ballot, please carefully read and consider the information contained in this Disclosure Statement, the Plan, any Plan Supplement, the exhibits attached to, and the agreements and documents described in, each of the foregoing.

What are the risks related to the Plan?

You should carefully review Article VI of this Disclosure Statement, entitled “Risk Factors,” for a discussion of the risks relating to the Plan.

When will the Plan become effective?

The Plan will become effective when all of the pre-confirmation and post-confirmation conditions are satisfied or waived. The conditions to the Plan becoming effective are set forth in this Disclosure Statement. See Article IV.D entitled “Conditions Precedent” for a list of certain additional conditions to confirmation and effectiveness of the Plan.

Who can help answer my questions?

If you have any questions regarding this Disclosure Statement or the Plan, you should contact counsel to the Debtors via telephone or email to Jesse S. Vogtle, Jr., (205) 214-6380 or Jesse.Vogtle@wallerlaw.com. Debtors’ counsel will attempt to respond to you in a timely manner. If you have any questions relating to voting on the Plan or if you need a new ballot, you should contact the Solicitation Agent at:

FM Coal Ballot Processing, c/o Donlin Recano & Company, Inc.,
P.O. Box 199043
Blythebourne Station
Brooklyn, NY 11219
(866) 627-2494
fminfo@donlinrecano.com

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EXHIBIT D	The Debtors' Financial Projections
EXHIBIT E	FM Coal, LLC's Corporate Organizational Structure

Nothing contained in this Disclosure Statement (this “Disclosure Statement”) shall constitute an offer, acceptance, or a legally binding obligation of the Debtors, any of the Debtors’ affiliates or any other person. This Disclosure Statement is subject to approval by the United States Bankruptcy Court for the Northern District of Alabama (the “Bankruptcy Court”) and other customary conditions. Absent approval by the Bankruptcy Court, this Disclosure Statement is not a solicitation of acceptances or rejections of the *First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the “Plan”), as the same may be amended or modified from time to time in accordance with the terms thereof, a copy of which is attached to this Disclosure Statement as Exhibit A. Acceptances or rejections with respect to the Plan may not be solicited until this Disclosure Statement has been approved by the Bankruptcy Court. Such a solicitation will only be made in compliance with applicable provisions of securities and/or bankruptcy laws. Future developments relating to the matters described herein may require modifications, additions, or deletions to this Disclosure Statement.

IMPORTANT NOTICE

Only documents, including this Disclosure Statement and its related documents that are approved by the Bankruptcy Court pursuant to section 1125(b) of title 11 of the United States Code (the “Bankruptcy Code”), may be used in connection with soliciting votes on the Plan. No statements have been authorized by the Bankruptcy Court concerning FM Coal, LLC (“FM Coal”) and certain of its affiliates and subsidiaries that are debtors and debtors in possession (collectively, the “Debtors”) or the value of their assets, except as explicitly set forth in this Disclosure Statement.

Please refer to the Plan (or, where indicated, certain motions filed with the Bankruptcy Court) for definitions of the capitalized terms that are used but not defined in this Disclosure Statement.

The Debtors reserve the right to file amendments to the Plan and Disclosure Statement from time to time. The Debtors urge you to read this Disclosure Statement carefully for a discussion of: voting instructions; recovery information; classification of claims; the history of Debtors and the Chapter 11 Cases; the Debtors’ businesses, properties, and results of operations; historical and projected financial results; and a summary and analysis of the Plan.

The Plan and this Disclosure Statement are not required to be prepared in accordance with the requirements of federal or state securities laws or other applicable non-bankruptcy law. This Disclosure Statement is being submitted for approval, but has not yet been approved, by the Bankruptcy Court. Any such approval by the Bankruptcy Court of this Disclosure Statement as containing “adequate information” will not constitute endorsement of the Plan by the Bankruptcy Court, and none of the Securities Exchange Commission (the “SEC”), any state securities commission or similar public, governmental or regulatory authority has approved this Disclosure Statement, the Plan, or has passed on the accuracy or adequacy of the statements in this Disclosure Statement. Any representation to the contrary is a criminal offense. Persons trading in or otherwise purchasing, selling or transferring securities of the Debtors should evaluate this Disclosure Statement in light of the purposes for which it was prepared.

This Disclosure Statement contains only a summary of the Plan and certain other documents. It is not intended to replace a careful and detailed review and analysis of the Plan and other documents, but only to aid and supplement such review. This Disclosure Statement is qualified in its entirety by reference to the Plan, any supplements to the Plan filed with the Bankruptcy Court subsequent to the filing date of this Disclosure Statement (collectively, the “Plan Supplement”) and the exhibits attached hereto and thereto and the agreements and documents described herein and

therein. If there is a conflict between the Plan and this Disclosure Statement, the provisions of the Plan will govern. You are encouraged to review the full text of the Plan and the Plan Supplement and to read carefully the entire Disclosure Statement, including all exhibits hereto, before deciding how to vote with respect to the Plan.

Except as otherwise indicated, the statements in this Disclosure Statement are made as of the date on which this Disclosure Statement was filed, and the delivery of this Disclosure Statement does not imply that the information contained in this Disclosure Statement is correct at any time after such date. Any estimates of claims or interests in this Disclosure Statement may vary from the final amounts of claim or interests allowed by the Bankruptcy Court.

You should not construe this Disclosure Statement as providing any legal, business, financial, or tax advice, and you should consult with your own legal, business, financial, and tax advisors regarding the transactions contemplated by the Plan.

As to contested matters, adversary proceedings and other actions or threatened actions, whether now pending or initiated in the future, this Disclosure Statement is not, and is in no event to be construed as, an admission, or stipulation of the Debtors, the Committee, or the Reorganized Debtors. Instead this Disclosure Statement is, and is for all purposes to be construed as, solely and exclusively, a statement made by the Debtors in settlement negotiations. Any statements or descriptions contained in Article III of this Disclosure Statement, or any other statements or descriptions regarding the factual background of the Debtors or descriptions of events arising prior to or during these Chapter 11 Cases, solely represent the views of the Debtors' management, and shall not constitute admissions of, or have any estoppel or other prejudicial effect on the Reorganized Debtors, including with respect to any position the Reorganized Debtors may take in any future litigation.

**THE DEBTORS URGE
HOLDERS OF CLAIMS TO VOTE TO ACCEPT THE PLAN.**

**THE COMMITTEE DOES NOT CURRENTLY SUPPORT THE PLAN, AS PROPOSED.
HOWEVER, THE COMMITTEE CONTINUES TO WORK CONSTRUCTIVELY AND
NEGOTIATE WITH THE DEBTORS AND OTHER KEY STAKEHOLDERS TO THE
RESOLVE THE COMMITTEE'S ISSUES WITH THE PLAN IN ADVANCE OF THE
CONFIRMATION HEARING.**

ARTICLE I. INTRODUCTION

The Debtors submit this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code to Holders of Claims against and Equity Interests in the Debtors in connection with: (1) the solicitation of acceptances of the Plan, filed by the Debtors with the Bankruptcy Court; and (2) the hearing to consider confirmation of the Plan (the “Confirmation Hearing”), scheduled to commence on January 25, 2021, at 10:00 a.m. (prevailing Central time). **Unless otherwise indicated or defined herein, all capitalized terms contained herein have the meanings ascribed to them in the Plan.**

Attached as exhibits to this Disclosure Statement are:

- The Plan (Exhibit A);
- Order of the Bankruptcy Court, dated December 1, 2020 (the “Solicitation Procedures Order”), which, among other things, approves this Disclosure Statement and establishes certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan (without exhibits, Exhibit B);
- The Debtors’ Liquidation Analysis (Exhibit C);
- The Debtors’ Financial Projections (Exhibit D); and
- FM Coal, LLC’s Corporate Organizational Structure (Exhibit E).

In addition, unless otherwise noted, a ballot for the acceptance or rejection of the Plan is enclosed with each copy of this Disclosure Statement that is submitted to the Holders of Claims that are entitled to vote to accept or reject the Plan.

On December 1, 2020, after notice and a hearing, the Bankruptcy Court entered the Solicitation Procedures Order, approving the Disclosure Statement as containing adequate information of a kind, and in sufficient detail, to enable hypothetical, reasonable persons typical of the Debtors’ creditors and equity holders to make an informed judgment regarding the Plan. **APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.**

The Solicitation Procedures Order sets forth in detail the deadlines, procedures, and instructions for voting to accept or reject the Plan and filing objections to confirmation of the Plan, the record date for voting purposes and the applicable standards for tabulating votes. In addition, detailed voting instructions accompany each ballot. Each Holder of a Claim entitled to vote on the Plan should read this Disclosure Statement, the Plan, the Plan Supplement, and the exhibits attached to all of the foregoing documents, and the agreements and documents described herein and therein, the Solicitation Procedures Order, and the instructions accompanying the ballot in their entirety before voting on the Plan. These documents contain, among other things, important information concerning the classification of Claims for voting purposes and the tabulation of votes. No solicitation of votes to accept the Plan may be made except pursuant to section 1125 of the Bankruptcy Code.

A. Holders of Claims Entitled to Vote

Under the Bankruptcy Code, only holders of allowed claims in impaired classes of claims that are not deemed to have accepted or rejected a proposed plan are entitled to vote to accept or reject a proposed chapter 11 plan.

A class of claims is “impaired” under a plan unless, with respect to each claim of such class, the plan:

- leaves unaltered the legal, equitable, or contractual rights to which the holder of the claim is entitled; or
- notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment on account of a default, cures any default, reinstates the original maturity of the obligation, compensates the holder for any damages incurred as a result of reasonable reliance on such provision or law and does not otherwise alter the legal, equitable, or contractual rights of such holder based on such claim.

Classes of claims that are unimpaired under a chapter 11 plan conclusively are presumed to have accepted the plan and are not entitled to vote to accept or reject the plan. Classes of claims in which the holders of otherwise unsatisfied claims will receive no recovery under a chapter 11 plan are deemed to have rejected the plan and are also not entitled to vote to accept or reject the plan.

What Classes of Claims Are Entitled to Vote on the Plan?³

The following classes of Claims are Impaired and entitled to vote on the Plan:

- Class 3 Credit Agreement Secured Claims
- Class 4 General Unsecured Claims

Which Classes of Claims and Equity Interests are Not Entitled to Vote on the Plan?

The following Classes of Claims are not Impaired and deemed to accept the Plan:

- Class 1 Other Secured Claims
- Class 2 Other Priority Claims
- Class 6 Intercompany Equity Interests

As a result, Holders of Claims in the foregoing classes conclusively are presumed to have accepted the Plan and will not be entitled to vote to accept or reject the Plan. If the Debtors obtain a Bankruptcy Court Order designating other Classes of Claims as unimpaired, those classes will also not be entitled to vote to accept or reject the Plan.

³ The Debtors reserve the right to classify and seek an order of the Bankruptcy Court designating these Claims (as applicable) as unimpaired and not entitled to vote, and any impairment designation contained herein shall have no probative value with respect to any request for such classification order.

The following Classes of Claims and Equity Interests are deemed to reject the Plan and are also not entitled to vote:

- Class 5 Intercompany Claims
- Class 7 FM Equity Interests

The Bankruptcy Code defines “acceptance” of a plan by a class of impaired claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims that cast ballots for acceptance or rejection of the plan. In the event that the Debtors obtain an order of the Bankruptcy Court holding that any Class of Claims is unimpaired, each Holder of an Allowed Claim in any such Class will be conclusively presumed to have accepted the Plan and any votes to accept or reject the Plan submitted by Holders of Claims in any such Class will be null, void, and have no effect.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. See Section V.C, entitled “Confirmation.”

If a Class of Claims entitled to vote on the Plan rejects the Plan, the Debtors reserve the right to amend the Plan, request confirmation of the Plan under section 1129(b) of the Bankruptcy Code, or both. Section 1129(b) permits the confirmation of a chapter 11 plan notwithstanding the non-acceptance of a plan by one or more impaired classes of claims through a procedure known as “cram-down.” See Section V.C.4, entitled “Cram Down.” Under section 1129(b), a plan may be confirmed by a bankruptcy court if it does not “discriminate unfairly” and is “fair and equitable” with respect to each non-accepting class. See Section V.C.4, entitled “Cram Down.”

If a Class of Claims entitled to vote does not vote to accept the Plan, the Debtors will announce their determination on whether to request confirmation of the Plan under section 1129(b) of the Bankruptcy Code prior to or at the Confirmation Hearing.

B. Voting Procedures

Procedures for Voting on the Plan

How do I vote on the Plan? For a vote to be counted, the Solicitation Agent must receive an original, signed ballot in a form approved by the Bankruptcy Court. Faxed copies will *not* be accepted.

When does the vote need to be received? The Voting Deadline for the receipt by the Solicitation Agent of properly completed ballots is **5:00 p.m. (prevailing Central Time) on January 5, 2021. The Voting Deadline is subject to extension as provided in the Solicitation Procedures Order.**

Which members of the Impaired Classes may vote? Within an Impaired Class, only Holders of Claims entitled to vote who held their Claims on the Voting Record Date may vote to accept or reject the Plan. The Voting Record Date for determining members of Impaired Classes that may vote on the Plan is **November 30, 2020**. In addition, Holders of Claims that are temporarily allowed for voting purposes, pursuant to an order of the Bankruptcy Court, may vote to accept or reject the Plan. If you hold Claims in more than one Class, you must submit a separate ballot for each Class in which you are entitled to vote.

Whom should I contact if I have questions or need a ballot? You may contact the Solicitation Agent at (866) 627-2494 (US toll-free) or fminfo@donlinrecano.com, with questions or requests related to voting on the Plan.

If you are entitled to vote to accept or reject the Plan, unless otherwise noted herein and/or in the Solicitation Procedures Order, a ballot is enclosed for voting on the Plan. The ballots have been specifically designed for the purpose of soliciting votes on the Plan from each Class entitled to vote. For this reason, when voting on the Plan, **please use only the ballot sent to you with this Disclosure Statement or one sent to you by the Solicitation Agent. If you hold Claims in more than one Class, you must use a separate ballot for voting with respect to each Class of Claims that you hold.** Please vote and return your ballot(s) in accordance with the instructions set forth in your ballot(s): (a) in the pre-addressed envelope accompanying each ballot to the Solicitation Agent, or (b) by electronic mail to the Solicitation Agent at DRCVote@donlinrecano.com.

Any executed ballot received that does not indicate either an acceptance or rejection of the Plan will not be counted. Any ballots received after the Voting Deadline will not be counted. All ballots must contain an original signature unless submitted electronically in accordance with the Solicitation Procedures Order to be counted. No other ballots, including those received by facsimile, will be counted.

The Solicitation Agent will tabulate results of the voting on the Plan on a Class-by-Class basis and will prepare an affidavit for filing with the Bankruptcy Court detailing the methodology used in tabulating such votes, as well as the results of the voting.

Any Claim in an Impaired Class as to which an objection or request for estimation is pending or which is scheduled by the Debtors as unliquidated, disputed or contingent and for which no proof of claim has been filed is not entitled to vote (except to the extent so indicated in any such objection or request for estimation) unless the Holder has obtained an order of the Bankruptcy Court temporarily allowing such Claim for the purpose of voting on the Plan.

If you are a Holder of a Claim entitled to vote on the Plan and did not receive a ballot, received an incorrect or damaged ballot or lost your ballot, or if you have any questions concerning this Disclosure Statement, the Plan or the procedures for voting on the Plan, please contact the Solicitation Agent at (866) 627-2494 (US toll-free) or fminfo@donlinrecano.com.

This Disclosure Statement, the Plan, the Plan Supplement, the Solicitation Procedures Order and any other documents approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code and the exhibits attached hereto and thereto and the agreements and documents described herein and therein are the only materials that you should use in determining how to vote on the Plan.

Holders of Claims and Equity Interests in Classes 1-2 and 6 will be deemed to have consented to the releases contained in Article IX.C.2 of the Plan. Holders of Claims and Equity Interests in Classes 3-6 and 7 will be deemed to have consented to the releases contained in Article IX.C.2 of the Plan if such Holders vote to accept the Plan or do not elect to opt-out of such releases. Holders of Claims and Equity Interests in Classes 5 and 7 must complete the opt-out form for Holders of Impaired Claims and Equity Interests deemed to reject the plan pursuant to the instructions set forth therein to effectively opt-out of the releases. Holders of Claims in Classes 3 and 4 must abstain from voting on the Plan or vote against the Plan and check the box under Item 2 of their ballot and return a validly executed ballot pursuant to the instructions set forth therein to opt-out of the releases contained in Article IX.C.2 of the Plan.

Voting Recommendation

The Debtors believe that confirmation and implementation of the Plan is preferable to any of the other alternatives available to the Debtors, which are described in Article VIII, titled “Alternatives to Confirmation and Consummation of the Plan,” because the Debtors believe the Plan will provide the greatest recoveries to Holders of Allowed Claims. Other alternatives could involve significant delay, uncertainty, and substantial additional administrative costs. **The Debtors encourage Holders of Claims to vote to accept the Plan.**

C. Confirmation Hearing

When and where is the Confirmation Hearing and what is the deadline for objections?

- Pursuant to section 1128 of the Bankruptcy Code, the Confirmation Hearing will commence on **January 25, 2021** at 10:00 a.m. (prevailing Central Time), before the Honorable Tamara O. Mitchell, United States Bankruptcy Judge. Honorable Tamara O. Mitchell, United States Bankruptcy Judge. The Confirmation Hearing will be held telephonically. Parties wishing to attend the telephonic Confirmation Hearing may do so by dialing (877) 366-1280 and entering access code 2653346#. The Confirmation Hearing may be adjourned from time to time by the Debtors without further notice, except for the announcement of the adjournment date made at or before the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.
- Any objection to confirmation of the Plan must be filed with the Bankruptcy Court and served in accordance with the Solicitation Procedures Order on or before **4:00 p.m.** (prevailing Central Time) on **January 5, 2021**. Objections to confirmation of the Plan are governed by Rule 9014 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”). Any objection to confirmation must be made in writing and specify in detail the name and address of the objector, all grounds for the objection, and the amount and description of the Claim or Equity Interest held by the objector.

ARTICLE II. EXECUTIVE SUMMARY

A. Overview of the Joint Plan of Reorganization

1. Estimated Recoveries

Under the terms of the Plan, Holders of Allowed Claims will receive the following treatment⁴:

1. Other Secured Claims (Class 1): Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive the following, at the Debtors’ option: (i) payment in full in Cash equal to the amount of such Allowed Other Secured Claim; (ii) the collateral securing its Allowed Other Secured Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (iii) Reinstatement of such Allowed Other Secured Claim; or (iv) such other treatment rendering such Allowed Other Secured Claim Unimpaired.

⁴ This summary is qualified in its entirety by the terms of the Plan.

2. Other Priority Claims (Class 2): In full and final satisfaction, settlement, release, and discharge of each Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim, on or as soon as practicable after the later of the Effective Date or the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, will either be paid the full amount of such Holder's Allowed Other Priority Claim, or such lesser amount as the Debtors or Reorganized Debtors (as applicable) and the Holder of the Other Priority Claim may agree to in writing, in Cash.

3. Credit Agreement Secured Claims (Class 3): On the Effective Date, Holders of Allowed Credit Agreement Secured Claims will become bound by the A&R Credit Documents and receive, in full and final satisfaction, settlement, release, and discharge of each Allowed Credit Agreement Secured Claim, their Pro Rata share of each of the A&R Term Loans. On the Effective Date, except as set forth in Article IV.F of the Plan, the Credit Agreement shall be deemed replaced by the A&R Credit Agreement, without the need for any Holder of an Allowed Credit Agreement Secured Claim that does not vote for the Plan or votes to reject the Plan to execute the A&R Credit Documents, including, without limitation, the A&R Credit Agreement, and each Lien and security interest that secures obligations arising under the Credit Agreement shall be reaffirmed, ratified, and deemed granted by each Reorganized Debtor to secure all obligations of the Reorganized Debtors arising under the A&R Credit Agreement.

Principal payments on the Lenders' A Loan (and, on a pro rata basis to the Lenders' B Loan if the underlying letter of credit is drawn) shall be made quarterly in an amount equal to 75% of an excess cash flow formula reasonably acceptable to the Reorganized Debtors and Lenders. Principal payments on the Lenders' C loan shall not be payable until repayment in full of the Lenders' A Loan and the Lenders' B Loan and shall be based upon a sharing mechanism reasonably acceptable to the Reorganized Debtors and Lenders.

The Lenders' A Loan shall accrue interest at the rate of seven percent (7%) per annum, which shall be payable monthly. The Lenders' B Loan shall not accrue interest unless the underlying letter of credit is drawn, in which case the Lenders' B Loan shall accrue interest at the rate of seven percent (7%) per annum, which shall be payable monthly. The Lenders' C Loan shall accrue interest at the rate of seven percent (7%) per annum, which interest shall be payable on the maturity date.

The Lenders' A Loan, Lenders' B Loan, and Lenders' C Loan shall mature on December 31, 2022.

4. General Unsecured Claims (Class 4): Each Holder of an Allowed General Unsecured Claim not otherwise paid during the pendency of the Chapter 11 Cases (other than any Holder of a Credit Agreement Deficiency Claim) shall receive its Pro Rata share of the General Unsecured Creditor Distribution.

5. Intercompany Claims (Class 5): On the Effective Date or as soon thereafter as is practicable, Intercompany Claims may be extinguished or compromised by distribution, contribution, or otherwise Reinstated, at the sole option of the Debtors or the Reorganized Debtors (as applicable) on or after the Effective Date.

6. Intercompany Equity Interests (Class 6): On the Effective Date, all Intercompany Equity Interests shall remain effective, outstanding, and be Reinstated and shall be owned and held, directly or indirectly, by Reorganized FM.

7. FM Equity Interests (Class 7): On the Effective Date, all FM Equity Interests shall be deemed cancelled, released, discharged, and extinguished without further action by the Debtors or Reorganized Debtors.

The following table briefly summarizes the classification and treatment of Claims and Equity Interests under the Plan. The summary also identifies the Classes that are entitled to vote on the Plan under the Bankruptcy Code. This summary is qualified in its entirety by reference to the Plan, the Plan Supplement and the exhibits attached hereto and thereto and the agreements and documents described herein and therein.

Important Note on Estimates

The estimates in the tables and summaries in this Disclosure Statement may differ materially from actual distributions under the Plan. These differences may be due to a number of factors, including:

- the resolution through compromise or judicial determination of disputes among different stakeholders;
- the asserted or estimated amounts of Allowed Claims;
- the existence and ultimate resolution of Disputed Claims;
- the timing of distributions; and
- the timing of the Debtors' emergence from bankruptcy.

Statements regarding projected distributions (or the value of such distributions) are estimates by the Debtors based on current information and are not representations or commitments as to the accuracy of these amounts. See Section VI, titled "Risk Factors," for a discussion of factors that may affect the value of recoveries under the Plan.

Except as otherwise indicated, these statements and estimates are made as of the date of this Disclosure Statement, and the delivery of this Disclosure Statement does not imply that the information contained in this Disclosure Statement is correct at any time after such date.

Class	Claim	Status	Voting Rights	Low Estimated Recovery	High Estimated Recovery
1	Other Secured Claims	Unimpaired	Deemed to Accept	100%	100%
2	Other Priority Claims	Unimpaired	Deemed to Accept	100%	100%
3	Credit Agreement Secured Claims	Impaired	Entitled to Vote	46.67%	46.67%
4	General Unsecured Claims	Impaired	Entitled to Vote	2%	2% ⁵
5	Intercompany Claims	Impaired	Deemed to Reject	0%	0%
6	Intercompany Equity Claims	Unimpaired	Deemed to Accept	100%	100%
7	FM Equity Interest Claims	Impaired	Deemed to Reject	0%	0%

⁵ Excludes the Credit Agreement Deficiency Claims. The Debtors estimate that General Unsecured Claims (other than Credit Agreement Deficiency Claims) total approximately \$12 million and that the cash distribution to Holders of Allowed General Unsecured Claims will total \$240,000 in the aggregate. The Committee does not believe the cash distribution to Holders of Allowed General Unsecured Claims is adequate at this time and renders the Plan unconfirmable. However, the Committee continues to work constructively and negotiate with the Debtors and other key stakeholders regarding the cash distribution to Holders of Allowed General Unsecured Claims.

ARTICLE III. GENERAL INFORMATION⁶

A. Overview of Chapter 11

Chapter 11, the principal business reorganization chapter of the Bankruptcy Code, permits a debtor to reorganize or liquidate its business for the benefit of itself, its creditors, and equity interest holders. In addition to the rehabilitation or liquidation of a debtor, another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and equity interest holders in the distribution of a debtor's assets. The commencement of a chapter 11 case creates an estate comprised of all of the legal and equitable interests of the debtor as of the date the chapter 11 petition is filed. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a plan is the principal objective of a chapter 11 case. A plan of reorganization sets forth, among other things, the treatment of, and the means for satisfying, claims against and equity interests in a debtor. Confirmation of a plan by the bankruptcy court binds the debtor, any person acquiring property under the plan, any creditor or equity interest holder of a debtor, and any other person or entity subject to the terms of the Plan. Subject to certain limited exceptions, the order approving confirmation of a plan of reorganization discharges a debtor from any debt, equity interest, or other claim that arose prior to the date of confirmation of the plan and substitutes in place of such debts and other claims the obligations specified in the confirmed plan.

Certain holders of claims against, and sometimes equity interests in, a debtor are permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical, reasonable claimant or holder of an equity interest to make an informed judgment regarding the plan. The Debtors are submitting this Disclosure Statement, pursuant to section 1124 of the Bankruptcy Code, to holders of Claims against the Debtors that are entitled to vote to accept or reject the Plan.

B. Description and History of the Debtors' Businesses

1. Corporate History

FM Coal was formed on July 28, 2017. FM Coal's original members and managers were Freddy Hunt and Michael Costello. Shortly thereafter, on September 1, 2017, FM Coal acquired (the "Acquisition") from Otis R. "Randy" Robinson and Kendall "Kenny" Robinson (collectively, the "Sellers") the shares and/or membership interests in the other Debtors. As part of the Acquisition, the Sellers also transferred certain equipment to FM Coal, and FM Coal assumed certain liabilities. The Acquisition was funded by new senior secured financing totaling \$70 million, which also included the refinancing of certain existing debt, transaction related expenses and FM Coal's acquisition of additional equipment.

Until August 2019, FM Coal's operations were managed by Freddy Hunt, who became Chief Operating Officer of FM Coal on or about September 1, 2017, when FM Coal acquired the stock and/or

⁶ As set forth above, any statements or descriptions contained in Article III of this Disclosure Statement, or any other statements or descriptions regarding the factual background of the Debtors or descriptions of events arising prior to or during these Chapter 11 Cases, solely represent the views of the Debtors' management, and shall not constitute admissions of, or have any estoppel or other prejudicial effect on, the Debtors or Reorganized Debtors, including with respect to any position the Debtors or Reorganized Debtors may take in any future litigation.

membership interests in the other Debtors. Mr. Hunt was a 50% owner of FM Coal until his separation from FM Coal in July 2019. On July 30, 2019, Mr. Hunt sold his membership interest in FM Coal to Michael Costello. Since Mr. Hunt's separation from FM Coal, Michael Costello has owned 100% of FM Coal. Upon Mr. Hunt's separation from FM Coal, John McNab began leading the day-to-day operations of FM Coal. The Committee continues to investigate and seek documents and testimony regarding former and current Holders of Equity Interests.

On October 11, 2019, a motion was filed in the chapter 11 cases of Blackjewel, L.L.C. and its affiliated debtors (the "Blackjewel Debtors") seeking authorization of the transfer of certain assets and liabilities to, as characterized by the Blackjewel Debtors, "an affiliate of FM Coal, LLC or its designee (the "Purchaser"), which is an affiliate of the parent of the purchaser of the [Blackjewel] Debtors' western assets (the "Western Assets"), Eagle Specialty Materials, LLC ("ESM")." The Debtors dispute the Blackjewel Debtors' characterization and do not have any record of any assets or liabilities being transferred from the Blackjewel Debtors to FM Coal or any of the other Debtors. ESM also disputes the Blackjewel Debtors' characterization. The Committee and ESM reserve all rights with respect to ESM's claims in these Chapter 11 Cases.

2. Business Operations

The Debtors are engaged in the business of extracting, processing and marketing metallurgical coal and thermal coal from surface mines. The Debtors' customers include steel and coke producers, industrial customers and electric utilities.

The Debtors have three mines that are currently operational, two of which are located in Jefferson County, Alabama (the Flat Top Mine and the Sloan Mountain 3 Mine). The operational mines in Jefferson County account for approximately 71% of the Debtors' total revenue and approximately 60% of the total tons of coal produced by the Debtors. Further, the mining operations at the Flat Top Mine in Jefferson County (which currently account for 41% of the Debtors' revenue), are anticipated to increase because the Debtors' highwall miner was moved from the Dutton Hill Mine in Walker County to the Flat Top Mine in August 2020, and production with the highwall miner is began at the Flat Top Mine in late September 2020. The remaining operational mine, the Choctaw Mine, is in Walker County and accounts for approximately 27% of the Debtors' total revenue and approximately 37% of the total tons of coal produced by the Debtors. Operations at the Choctaw Mine currently consist of highwall mining performed primarily by a third party mining contractor who is scheduled to continue through the end of 2020.

In addition to the three operational mines, the Debtors own or lease seventeen mines that are non-operational—thirteen mines at which reclamation is in process, and four mines at which the Debtors have never begun mining activities. Those assets are located in Jefferson, Walker, Marion, Winston and Cullman Counties respectively. The Debtors also own or lease two coal washing plants which are currently in use: the North Pratt Washer in Jefferson County; and the Choctaw Washer in Walker County. The Debtors currently have sufficient bonds in place for the mines in reclamation.

As covered in more detail below and the chart attached hereto as **Exhibit D** and incorporated herein by reference, the Flat Top Mine, the North Pratt Coal Washing Plant and the Cane Creek mine are all owned by Debtor Cane Creek, LLC ("Cane Creek"). All of the other mines are leased.

Flat Top Mine

The Flat Top Mine ("Flat Top") is an active mining operation located in Jefferson County and currently produces 42% of the Debtors' revenue. Flat Top is owned by Debtor Cane Creek but is mined by Debtor Cedar Lake Mining Inc. ("Cedar Lake"). The mining operations at Flat Top are expected to increase

given that the highwall mining equipment, formerly at the Dutton Hill Mine, was put into use at Flat Top. This equipment was moved to Flat Top in August 2020, and production began in late September 2020. Flat Top is fully staffed with employees working ten hour shifts.

Sloan Mountain 3 Mine

The Sloan Mountain 3 Mine (“Sloan #3”) is an active mining operation located in Jefferson County and currently produces 28% of the Debtors’ revenue. Sloan #3 is mined by Debtor M. S. & R. Equipment Co., Inc. (“MS&R”).

North Pratt Coal Washing Plant

The North Pratt Coal Washing Plant (the “North Pratt Washer”) is an active coal prep operation located in Jefferson County. The North Pratt Washer is owned by Cane Creek but is operated by Cedar Lake in connection with the mining activities at Flat Top.

Choctaw Mine and Coal Washing Plant⁷

The Choctaw Mine and Coal Washing Plant (collectively, “Choctaw”) is an active mining and coal prep operation located in Walker County and operated by Cedar Lake. Choctaw is currently operated by employees of the Debtors and a separate mining subcontractor. The mining subcontractor is scheduled to continue mining through the end of 2020. Currently, Choctaw provides less than 27% of the Debtors’ total revenue and approximately 37% of the total tons of coal produced by the Debtors.

Narley Mine No. 3

The Narley Mine No. 3 (“Narley #3”) is located in Walker County. Best Coal, Inc. (“Best Coal”) operated Narley # 3 but has ceased operations. Reclamation is currently in process at Narley #3.

Gooden Creek 2 Mine

The Gooden Creek 2 Mine (“Gooden Creek #2”) is located in Walker, Marion and Winston Counties. Cedar Lake operated Gooden Creek #2 but has ceased mining operations. Reclamation is currently in process at Gooden Creek #2.

Buttahatchee Mine

The Buttahatchee Mine (“Buttahatchee”) is located in Walker County, Alabama. Cedar Lake operated Buttahatchee but ceased mining operations due to unacceptably high overburden ratios and other factors. Reclamation is currently in process at Buttahatchee.

Dutton Hill Mine

The Dutton Hill Mine (“Dutton Hill”) is located in Walker County, Alabama. Cedar Lake operated Dutton Hill but ceased mining operations in 2020. Reclamation is currently in process at Dutton Hill.

⁷ The Choctaw Mine and Coal Washing Plant may be referred to in some documents as “Robbins Road”, because that is the name of one of the permits issued at the Choctaw mine.

Cane Creek Mine

Cane Creek Mine is located in Walker County, Alabama. Cane Creek Mine is owned by Cane Creek but was operated by Cedar Lake. Mining operations have ceased and reclamation is currently in process at Cane Creek Mine.

Coal Valley East Mine

The Coal Valley East Mine (“Coal Valley East”) is located in Walker County, Alabama. Cedar Lake operated Coal Valley East but has ceased mining operations. Reclamation is currently in process at Coal Valley East.

Little Spring Creek Mine

The Little Spring Creek Mine (“Little Spring Creek”) is located in Walker County, Alabama. Cedar Lake operated Little Spring Creek but ceased mining operations due to unacceptably high overburden ratios and other factors. Reclamation is currently in process at Little Spring Creek.

Reese’s Branch Mine

The Reese’s Branch Mine (“Reese’s Branch”) is located in Walker County, Alabama. Cedar Lake operated Reese’s Branch but has ceased mining operations. Reclamation is currently in process at Reese’s Branch.

Reid School Mine

The Reid School Mine (“Reid School”) is located in Walker County, Alabama. Cedar Lake operated Reid School but has ceased mining operations. The final stages of reclamation are currently in process at Reid School.

Coal Valley Mine

The Coal Valley Mine (“Coal Valley”) is located in Walker County, Alabama. Debtor Xinerger of Alabama, Inc. (“Xinerger”) operated Coal Valley but has ceased mining operations. Reclamation is currently in process at Coal Valley.

Sloan Mountain 1 Mine

The Sloan Mountain 1 Mine (“Sloan #1”) is located in Jefferson County, Alabama. MS&R operated Sloan #1 but has ceased mining operations. Reclamation is currently in process at Sloan #1.

Sloan Mountain 2 Mine

The Sloan Mountain 2 Mine (“Sloan #2”) is located in Jefferson County, Alabama. MS&R operated Sloan #2 but has ceased mining operations. Reclamation is currently in process at Sloan #2.

Narley Mine No. 2

The Narley Mine No. 2 (“Narley #2”) is located in Walker County, Alabama. Best Coal operated Narley #2 but ceased mining operations due to unacceptably high overburden ratios and other factors. Reclamation is currently in process at Narley #2.

Carbon Hill Mine

The Carbon Hill Mine (“Carbon Hill”) is located in Walker County, Alabama and is leased by Cedar Lake. However, Cedar Lake has not initiated any mining operations at Carbon Hill.

Bremen Mine

The Bremen Mine (“Bremen”) is located in Cullman County, Alabama and is leased by Cedar Lake. Cedar Lake assumed reclamation liability at Bremen when Cedar Lake acquired its interest in Bremen. However, Cedar Lake has not initiated any mining operations at Bremen, and it is unlikely that Cedar Lake will ever do so.

Gayosa Mine

The Gayosa Mine (“Gayosa”) is located in Walker County, Alabama and is leased by Cedar Lake. However, Cedar Lake has not initiated any mining operations at Gayosa.

Jagger Mine

Jagger Mine (“Jagger”) is located in Walker County, Alabama and is leased by Best Coal. However, Best Coal has not initiated any mining operations at Jagger.

Summary Table of Operations

The following table shows the Debtors’ operations as explained above and as shown on the Debtors’ organizational and operations chart attached hereto as **Exhibit E** and incorporated herein by reference:

	Operation	Debtor	AL County	Status
1.	Flat Top Mine	Cedar Lake (Mine owned by Cane Creek, LLC)	Jefferson	Active
2.	Sloan Mountain 3 Mine	MS&R	Jefferson	Active
3.	North Pratt Washer	Cedar Lake (washer facility owned by Cane Creek, LLC)	Jefferson	Active
4.	Choctaw Mine and Washer	Cedar Lake	Walker	Active
5.	Narley Mine No. 3	Best Coal	Walker	In reclamation
6.	Gooden Creek 2 Mine	Cedar Lake	Walker / Marion / Winston	In reclamation
7.	Buttahatchee Mine	Cedar Lake	Walker	In reclamation
8.	Dutton Hill Mine	Cedar Lake	Walker	In reclamation
9.	Cane Creek Mine	Cedar Lake (Mine owned by Cane Creek, LLC)	Walker	In reclamation
10.	Coal Valley East Mine	Cedar Lake	Walker	In reclamation
11.	Little Spring Creek Mine	Cedar Lake	Walker	In reclamation
12.	Reese’s Branch Mine	Cedar Lake	Walker	In reclamation
13.	Reid School Mine	Cedar Lake	Walker	In reclamation
14.	Coal Valley Mine	Xinergy	Walker	In reclamation

	Operation	Debtor	AL County	Status
15.	Sloan Mountain 1 Mine	MS&R	Jefferson	In reclamation
16.	Sloan Mountain 2 Mine	MS&R	Jefferson	In reclamation
17.	Narley Mine No. 2	Best Coal	Walker	In reclamation
18.	Carbon Hill Mine	Cedar Lake	Walker	Not begun
19.	Bremen Mine	Cedar Lake	Cullman	Not begun
20.	Gayosa Mine	Cedar Lake	Walker	Not begun
21.	Jagger Mine	Best Coal	Walker	Not begun

3. Customers

The Debtors' customer base includes steel and coke producers, industrial customers and electric utilities. Currently, approximately 66% of the Debtors' sales are through the Alabama Coal Cooperative which, together with other Alabama coal producers, supplies coal to Alabama Power Company. One or more of the Debtors is a member of the Alabama Coal Cooperative. There is an existing contract between Alabama Coal Cooperative and Alabama Power Company (and/or The Southern Company) that, unless extended, will expire under its terms on December 31, 2022. Approximately 34% of the Debtors' remaining sales are to seven other customers, which are Southern Coal-Argos, Carmeuse, ABC Coke, Coal Network, Globe Metallurgical, Blue Stone Coke and Javelin.

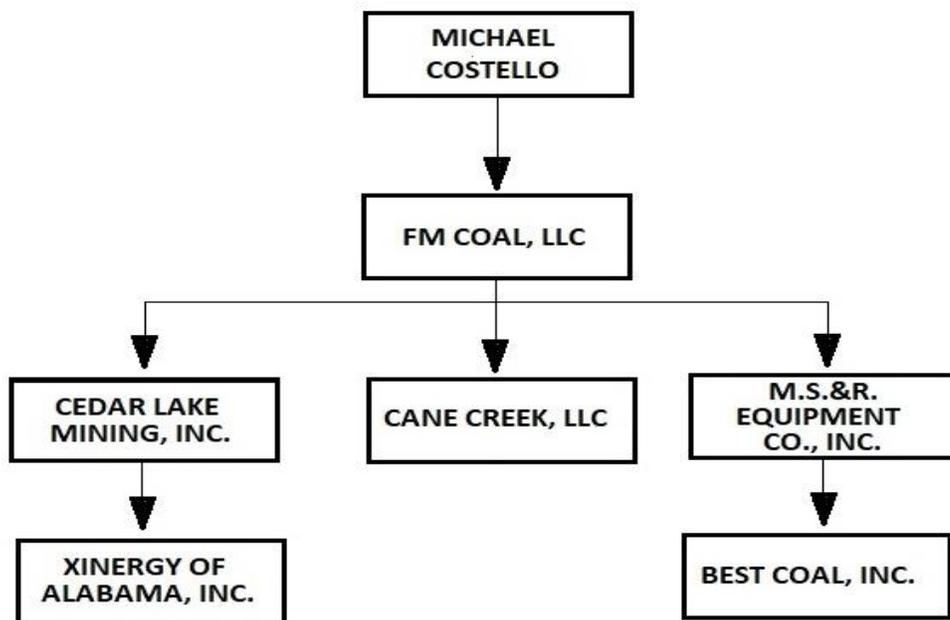
4. Employees

The Debtors currently employ approximately 153 individuals on a full-time basis, which number changes from time to time in the ordinary course. The Debtors' employees include miners, truck and equipment operators, production oversight management, office staff, human resource administration, senior accountant, controller and chief operating officer. All of the Debtors' employees are paid through payroll and most of the Debtors' employees are paid on an hourly basis.

C. Corporate and Capital Structure

1. The Debtors' Organizational Structure

The following chart shows the Debtors' basic organizational structure. The Debtors' full organizational and operations chart is attached hereto as **Exhibit E** and incorporated herein by reference.



2. Capital Structure

As of the Petition Date, FM Coal had approximately \$56 million in total aggregate principal amount of funded debt obligations. On September 1, 2017, FM Coal, as “Borrower”, the other Debtors, as “Subsidiary Guarantors”, Key Bank National Association, as “Administrative Agent”, “Swing Line Lender”, “Issuing Agent” and “Collateral Agent” (the “Agent”), and the lenders from time to time thereto (collectively, the “Lenders”), entered into that certain credit agreement, dated as of September 1, 2017 (such credit agreement, together with additional documents and ancillary agreements, as may have been amended, restated, supplemented, or otherwise modified from time to time, the “Credit Agreement”). The Credit Agreement provides for the making of loans to FM Coal and the issuance of letters of credit (collectively, the “Letters of Credit”) for the account of FM Coal (the “Credit Facility”). More specifically, the Credit Agreement provides for loans in the form of a term loan in the maximum principal amount of \$70 million (the “Term Loan”) and a revolving loan in the maximum principal amount of \$10 million (the “Revolver”). As of the Petition Date, the principal balance under the Term Loan was \$50 million and the principal balance under the Revolver was \$6 million.⁸ Additionally, FM Coal has \$4 million securing an unfunded Letter of Credit (in support of reclamation surety bonds) issued under the Revolver. No additional financing is available under the Credit Facility.

The Term Loan and the Revolver (collectively, the “Loans”) bear interest at a rate of four hundred twenty five basis points (4.25%) in excess of the London Interbank Offered Rate (“LIBOR”) (and at no time may LIBOR be less than zero), plus a default rate of two hundred basis points (2.00%). The Loans are secured by liens on substantially all of the Debtors’ assets except for certain equipment subject to purchase money security interests and certain operating leases.

FM Coal used the proceeds of the Loans (i) to finance a portion of the consideration paid to the Sellers as part of the Acquisition, (ii) to finance the payment of fees and expenses incurred in connection

⁸ The maximum principal amount of the Revolver is \$10 million, of which, \$6 million is funded and \$4 million is securing an unfunded Letter of Credit.

with the Acquisition, (iii) to refinance and replace certain indebtedness of the Debtors, and (iv) with respect to the Revolver, to fund \$6 million of the \$20 million of principal payments made on the Term Loan.

3. Additional Obligations

Employee Wage and Benefit Obligations

The Debtors currently employ approximately 153 individuals on a full-time basis, which number changes from time to time in the ordinary course. The employees include miners, truck and equipment operators, production oversight management, office staff, human resource administration, senior accountant, controller and chief operating officer. All of the Debtors' employees are paid through payroll and are hourly or salaried employees.

The Debtors' employees are paid every two weeks. Prior to the Petition Date, the Debtors paid approximately \$325,000 in the aggregate each pay period on account of employee salary compensation.

The Debtors also provide their employees (and the families of the Debtors' employees) with health and welfare benefit plans, including health insurance, dental insurance and vision insurance. The average monthly premium amount paid by the Debtors for the health, dental and vision insurance for the Debtors' employees and their families is \$250,000. Additionally, the Debtors provide their employees with paid time off, and \$100 bonuses if no accidents or equipment damage occur in a given month. Other employee compensation and benefits are more specifically set forth in the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Wages, Salaries, Other Compensation and Reimbursement of Expenses, and (II) Continue Employee Benefits Programs* (Dkt. No. 11).

Insurance Obligations

The Debtors maintain multiple insurance policies for workers' compensation, general liability, commercial automobile, equipment, general liability, site pollution liability and excess liability. The aggregate annual premium for the Debtors' insurance policies is approximately \$1,240,000, plus applicable taxes and surcharges.

Some (but not all), of the Debtors' insurance policies are financed through premium financing agreements with Intrust Bank, N.A., as more particularly described in the *Motion of Debtors for Entry of Interim and Final Orders Authorizing the Debtors to (I) Continue Certain Existing Insurance Coverage Entered Into Prepetition and Satisfy Payment Obligations Related Thereto, (II) Renew, Amend, Supplement, Extend, or Purchase Insurance Coverage in the Ordinary Course of Business, (III) Honor the Terms of the Premium Financing Agreement, and (IV) Granting Related Relief* (Dkt. No. 17). The combined total monthly payment for the premium financing agreements is approximately \$67,806 each month.

Tax Obligations

In connection with the normal operation of their businesses, the Debtors collect, withhold and/or incur (i) production taxes, (ii) excise taxes, (iii) environmental and safety fees and assessments, (iv) sales taxes and use taxes, (v) employment taxes, (vi) franchise taxes and privilege taxes and (vii) property taxes, together with other taxes, fees and charges described in the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Pay Certain Prepetition Taxes, Governmental Assessments and Fees, (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers, and (III) Granting Related Relief* (Dkt. No. 13).

Asset Retirement Obligations

The Debtors' asset retirement obligations include the reclamation of surface land, refuse areas, slurry ponds and support facilities in accordance with reclamation laws as required by each mining permit. As of May 31, 2020, the Debtors' estimated reclamation liability was \$14 million. As set forth in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Continue and Renew Their Surety Bond Program and (II) Granting Related Relief* (Dkt. No. 16), the Debtors have sufficient surety bonds in place to cover these obligations.

Legal Proceedings

The Debtors are subject to a number of lawsuits in both state and federal court. With the exception of two (2) cases filed in 2013 and 2014 seeking workers compensation benefits, most of this litigation is still at the early stages. The Debtors may incur costs not only based on the eventual outcome of these proceedings but also through legal and administrative costs incurred throughout the course of these proceedings. As of the Petition Date, the Debtors are subject to the following lawsuits:

(i) ***Amy Cook v. Cedar Lake Mining, Inc., Dyno Nobel, Inc. and Timothy Lemmons***, Case No. 64-CV-2020-900142 in the Circuit Court of Walker County, Alabama. This case was filed on May 19, 2020 in connection with the death of Micky Cook, seeking workers compensation benefits and damages for negligence, wantonness and strict liability in amounts not specified.

(ii) ***Intertractor Am. Corp. v. Cedar Lake Mining, Inc.***, Case No. 6:20-cv-00358 in the United States District Court in the Northern District of Alabama. This case was filed on March 17, 2020 seeking damages for breach of contract. The amount claimed is \$359,800.60 plus attorneys' fees, court costs and interest.

(iii) ***Thompson Tractor Co., Inc. v. Best Coal, Inc. and FM Coal, LLC***, Case No. 01-CV-2020-900975 in the Circuit Court of Jefferson County, Alabama. This case was filed on March 10, 2020 seeking damages for breach of contract. The amount claimed is \$184,439.72 plus prejudgment interest, post-judgment interest and court costs.

(iv) ***Thompson Tractor Co., Inc. v. M. S. & R. Equip. Co., Inc. and FM Coal, LLC***, Case No. 01-CV-2020-900977 in the Circuit Court of Jefferson County, Alabama. This case was filed on March 10, 2020 seeking damages for breach of contract. The amount claimed is \$199,551.47 plus prejudgment interest, post-judgment interest and court costs.

(v) ***Thompson Tractor Co., Inc. v. Cedar Lake Mining, Inc. and FM Coal, LLC***, Case No. 01-CV-2020-900978 in the Circuit Court of Jefferson County, Alabama. This case was filed on March 10, 2020 seeking damages for breach of contract. The amount claimed is \$957,872.04 plus prejudgment interest, post-judgment interest and court costs.

(vi) ***Pumpelly Oil Acquisition LLC v. FM Coal, LLC, Cedar Lake Mining, Inc., Best Coal, Inc. and M. S. & R. Equip. Co., Inc.***, Case No. 6:20-cv-00322 in the United States District Court in the Northern District of Alabama. This case was filed on March 9, 2020 alleging a contract dispute. The amount claimed is \$957,235.93 plus costs, fees and attorneys' fees.

(vii) ***Warrior Met Coal Mining, LLC and Warrior Met Coal Land, LLC v. Cedar Lake Mining, Inc.***, Case No. 63-CV-2020-900154 in the Circuit Court of Tuscaloosa County, Alabama. This case was filed on February 7, 2020 seeking a declaratory judgment for removal of equipment and cost of storage. The amount claimed is compensatory damages in excess of \$10,000.

(viii) *Dymo Nobel, Inc. v. M. S. & R. Equip. Co., Inc. and Cedar Lake Mining, Inc.*, Case No. 2:10-cv-01782 in the United States District Court in the Northern District of Alabama. This case was filed on October 31, 2019 seeking damages for breach of contract. The amount claimed is \$1,242,336.64 plus interest, attorneys' fees and court costs.

(ix) *Hugh Darty v. Cedar Lake Mining, Inc. and Otis R. Robinson, Jr.*, Case No. 01-CV-2017-000408 in the Circuit Court of Jefferson County, Alabama (transferred from the Circuit Court of Walker County, Alabama, Case No: 61-CV-2016-900349). This case was filed on October 6, 2016 seeking unspecified damages for breach of contract.

(x) *Scott Rigsby v. M. S. & R. Equip. Co., Inc.*, Case No. 64-CV-2014-900247 in the Circuit Court of Walker County, Alabama. This case was filed on May 27, 2014 seeking workers compensation benefits in an amount not specified.

(xi) *Mack Cooper v. Cedar Lake Mining, Inc.*, Case No. 64-CV-2013-900498 in the Circuit Court of Walker County, Alabama. This case was filed on December 2, 2013 seeking workers compensation benefits in an amount not specified.

D. Circumstances Leading to Chapter 11

1. The State of the Equipment Fleet

The single greatest challenge faced by the Debtors is the state of their equipment fleet. Since the Acquisition, the amount of investment in the Debtors' equipment has lagged behind the needed capital expenditures in light of the Debtors' continued operations. The current average age of the thirty-five highest value items of equipment is 10 years, and FM Coal has been unable to acquire the needed amount of new equipment since the Acquisition. Further, with FM Coal's limited liquidity (as discussed below), FM Coal has been limited in its ability to finance critical capitalized repairs such as engine and undercarriage replacements. FM Coal's current estimate of deferred capital expenditures exceeds \$12 million and has reached a state where it threatens basic operations, including meeting the allocations of Alabama Coal Cooperative as detailed below.

Prior to the Acquisition, Randy Robinson (one of the two Sellers) had managed operations. Mr. Robinson controlled an equipment company that regularly leased and repaired equipment for the mining operations. However, those equipment rental and repair services ceased with the Acquisition, and FM Coal did not replace the services of Mr. Robinson and his affiliated equipment company. As explained in more detail below, the deferred capital equipment purchases and repairs have caused less efficient operations and lost sales.

2. Decreases in Sales Volume and Revenue

The Debtors have experienced dramatic decreases in sales volume, from 1,452,302 tons in 2017, to 1,168,717 tons in 2018, to 949,330 tons in 2019. This includes the sales by Cedar Lake, Cane Creek, and Best Coal through Alabama Coal Cooperative. Additionally, the collective allotment of those Debtors with Alabama Coal Cooperative was reduced by 8.5% for 2019 (which remains unchanged for 2020), after those Debtors failed to meet their collective allocation with Alabama Coal Cooperative in 2018. Through the first seven months of 2020, the Debtors sold 362,773 tons, which represents a 35% decrease over the same period in 2019.

The Debtors also experienced a significant decrease in revenue in 2018, which dropped to \$104 million for that year from \$122 million in 2017.⁹ That decrease in revenue continued into 2019, with total revenue of \$87 million. Additionally, monthly revenue through July 2020 was approximately 37% lower than 2019 monthly revenue. As a result of the termination of the equipment rental and repair services previously provided by Randy Robinson's companies, repairs and maintenance as a percent of revenue increased from 14.7% in 2016 to 20% for 2019. Further, increased repairs have resulted in field labor inefficiencies and downtime, unscheduled equipment movement and other factors. This is evidenced by increased mining payroll costs, as a percent of revenue (from 13.5% in 2016 to 19.4% in 2019), as well as increased costs of goods sold as a percent of revenue (from 80% in 2016 to 101% in 2019).

3. Decreases in Liquidity and Working Capital

Since the Acquisition, the Debtors' liquidity and working capital have decreased significantly. From the closing of the Acquisition on September 1, 2017 through December 31, 2019, the Debtors made debt service payments on the Credit Facility totaling approximately \$26.7 million, which were partially funded by \$6 million of new borrowing on the Revolver. From September 1, 2017 to April 30, 2020, accounts receivable decreased by \$7.8 million and accounts payable increased by \$6.3 million. As of April 30, 2020, accounts payable was \$15.1 million, with \$7 million (or 46.4%) aged over 90 days. Most critical vendors currently require cash on delivery or cash in advance. On September 1, 2017, FM Coal had a net working capital of \$3 million. As of July 31, 2020, however, FM Coal's net working capital was at an \$11.7 million deficit.

4. Debt Service

In light of the above-described challenges, a reorganization through these chapter 11 cases was necessary for the Debtors to have the ability to service the Credit Facility. The Credit Agreement calls for Term Loan principal amortization payments of \$5.83 million per quarter, beginning on December 17, 2017 and continuing through September 30, 2020. FM Coal's first payment default under the Credit Facility was in June 2018. From the closing date of the Acquisition and the Credit Facility through April 30, 2020, the Debtors made principal payments on the Term Loan totaling approximately \$20 million, which were partially funded by \$6 million of borrowings on the Revolver.

Despite the challenges described in this Disclosure Statement, the Debtors' situation has become more stabilized in 2020, with the assistance of Aurora and a Paycheck Protection Program loan from the Small Business Administration, among other factors. The Debtors believe there is significant value in the contract between Alabama Coal Cooperative and Southern Company, which currently accounts for 60% of the Debtors' sales, as one of the Debtors is a member of the Alabama Coal Cooperative.

E. Material Events of the Chapter 11 Cases

1. Chapter 11 Filings

On September 1, 2020 (the "Petition Date"), each of the Debtors filed a petition for relief commencing the Chapter 11 Cases. The Chapter 11 Cases of the Debtors are jointly administered for procedural purposes.

2. First and Second Day Pleadings

⁹ By way of comparison, the Debtors' predecessor company averaged approximately \$120 million per year of total revenue for the three year period of 2014 through 2016.

To facilitate the administration of the Chapter 11 Cases and minimize disruption to the Debtors' operations, the Debtors filed certain motions and applications with the Bankruptcy Court on the Petition Date or soon thereafter seeking certain relief summarized below. The relief sought in the "first day" and "second day" pleadings facilitated the Debtors' seamless transition into chapter 11 and aided in the preservation of the Debtors' going-concern value. The first and second day pleadings included the following:

(i) Cash Management.

On September 2, 2020, the Bankruptcy Court entered the *Interim Order Granting the Motion of the Debtor to (I) Continue to Operate Their Existing Cash Management System, (II) Honor Certain Prepetition Obligations Related Thereto, and (III) Maintain and Use Existing Business Forms* (Dkt. No. 44) authorizing the Debtors to continue using their established cash management system, bank accounts, and documents related to the bank accounts, in lieu of closing existing accounts and establishing an entirely new post-petition cash management system, to avoid disruption. On September 22, 2020, the Bankruptcy Court entered a Final Order granting such relief on a final basis (Dkt. No. 129).

(ii) Cash Collateral.

On September 2, 2020, the Bankruptcy Court entered the *Interim Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties, (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and (D) Granting Related Relief* [Docket No. 43] (the "Interim Cash Collateral Order"). The Interim Cash Collateral Order, among other things, authorized the Debtors to use cash collateral on a consensual basis, and further provided the Prepetition Secured Parties (as defined in the Interim Cash Collateral Order) with adequate protection in exchange for the use of such cash collateral. This relief was necessary to ensure that the Debtors had adequate liquidity to continue to operate in the ordinary course during the Chapter 11 Cases. On October 15, 2020, the Bankruptcy Court entered a Final Order authorizing the Debtors to use cash collateral on a final basis (Dkt. No. 191). The Committee's Challenge Period (as defined in such Final Order) currently expires on December 11, 2020. *See* Dkt. No. 274.

(iii) Insurance.

On September 2, 2020, the Bankruptcy Court entered the *Interim Order Authorizing the Debtors to (I) Continue Certain Existing Insurance Coverage Entered Into Prepetition and Satisfy Payment Obligations Related Thereto, (II) Renew, Amend, Supplement, Extend, or Purchase Insurance Coverage in the Ordinary Course of Business, (III) Honor the Terms of the Premium Financing Agreements and (IV) Granting Related Relief* (Dkt. No. 50) authorizing the Debtors to continue their insurance program in the ordinary course of business. On September 22, 2020, the Bankruptcy Court entered a Final Order granting such relief on a final basis (Dkt. No. 134).

(iv) Surety Bonds.

On September 2, 2020, the Bankruptcy Court entered the *Interim Order (A) Authorizing the Debtors to Continue and Renew Their Surety Bond Program and (B) Granting Related Relief* (Dkt. No. 49) authorizing the Debtors to continue their surety bond program in the ordinary course of business. On September 22, 2020, the Bankruptcy Court entered a Final Order granting such relief on a final basis (Dkt. No. 133).

(v) Taxes.

On September 2, 2020, the Bankruptcy Court entered the *Order (I) Authorizing (A) the Debtors to Pay Certain Prepetition Taxes, Governmental Assessments and Fees, and (B) Financial Institutions to Honor and Process Related Checks and Transfers; and (II) Granting Related Relief* (Dkt. No. 47) authorizing the payment of certain pre and post-petition taxes in the ordinary course of business.

(vi) Utilities.

On September 2, 2020, the Bankruptcy Court entered the *Interim Order Granting Motion of the Debtors for Entry of Interim and Final Orders (I) Approving the Adequate Assurance of Payment for Future Utility Services Proposed by Debtors, (II) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Services, (III) Approving Procedures by Debtors for Resolving Additional Assurance Requests, and (IV) Setting a Final Hearing Related Thereto* (Dkt. No. 48) approving the Debtors' proposed adequate assurance of future performance and related procedures, and barring utility providers from discontinuing, altering, or refusing service. On September 22, 2020, the Bankruptcy Court entered a Final Order granting such relief on a final basis (Dkt. No. 132).

(vii) Wages.

On September 2, 2020, the Bankruptcy Court entered the *Interim Order (I) Authorizing the Debtors to (A) Pay Certain Prepetition Wages, Salaries, Other Compensation, and Reimbursement of Expenses, and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* (Dkt. No. 45) authorizing the payment of certain pre- and post-petition employee and other obligations. On September 22, 2020, the Bankruptcy Court entered a Final Order granting such relief on a final basis (Dkt. No. 130).

(viii) Critical Vendors.

On September 2, 2020, the Bankruptcy Court entered the *Interim Order (I) Authorizing (A) the Debtors to Pay Prepetition Claims of Certain Critical Vendors and (B) Financial Institutions to Honor and Process Related Checks and Transfers and (II) Granting Related Relief* (Dkt. No. 46) authorizing the payment of certain prepetition trade claims to vendors critical to the Debtors' ongoing business and going-concern value in an amount up to \$800,000 on an interim basis. On September 22, 2020, the Bankruptcy Court entered a Final Order granting such relief on a final basis in an aggregate amount up to \$800,000 (Dkt. No. 131).

(ix) Key Employee Retention Program.

On October 5, 2020, the Bankruptcy Court entered the *Order (I) Approving the Debtors' Key Employee Incentive Program and (II) Granting Other Related Relief* (Dkt. No. 166) authorizing the Debtors to implement a key employee retention program to incentive specified employees to remain in the employ of the Debtors throughout these Chapter 11 Cases.

3. Procedural and Administrative Motions

To facilitate the efficient administration of the Chapter 11 Cases and to reduce the administrative burden associated therewith, the Debtors also filed and received authorization to implement several procedural and administrative motions including orders:

- authorizing the joint administration of the Chapter 11 Cases (Dkt. No. 37);

- extending the time during which the Debtors may file certain schedules of assets and liabilities, statements of financial affairs, and Bankruptcy Rule 2015.3 financial reports, and granting related relief (Dkt. No. 38);
- authorizing the Debtors to file both a consolidated list the Debtors' forty (40) largest unsecured creditors (Dkt. No. 39);
- approving the procedures for the compensation and reimbursement of expenses of retained Professionals in the Chapter 11 Cases (Dkt. No. 206); and
- allowing the Debtors to retain and compensate certain Professionals utilized in the ordinary course of business (Dkt. No. 207).

4. Retention of Chapter 11 Professionals

The Debtors also filed several applications and obtained authority to retain various professionals to assist the Debtors in carrying out their duties under the Bankruptcy Code during the Chapter 11 Cases. These professionals include:

- Donlin, Recano & Company, Inc. as claims and noticing agent and administrative advisor (Dkt. No. 51);
- Waller Lansden Dortch & Davis, LLP, as counsel to the Debtors (Dkt. No. 164); and
- Aurora Management Partners as financial advisors to the Debtors (Dkt. No. 165).

The Debtors have also filed an application to retain Helmsing Leach, P.C., as counsel to the Debtors' board of directors (Dkt. No. 236).

5. Appointment of the Statutory Committee of Unsecured Creditors

On September 11, 2020, the Bankruptcy Administrator for the Northern District of Alabama selected the members of the official committee of unsecured creditors (the "Committee") and filed a notice of appointment of the Committee pursuant to section 1102 of the Bankruptcy Code (Dkt. No. 95). Currently, the members of the Committee are: (a) Stewart Lubricants & Service Co., Inc., (b) Dyno Nobel, Inc., (c) S&S Heavy Equipment A/C Service LLC, (d) Brake Supply Co. Inc., (e) McGehee Engineering Corp., (f) Thompson Tractor Company, Inc., (g) Whitaker Contracting d/b/a Madison Materials, (h) Nelson Brothers, LLC, and (i) Drummond Company, Inc.

The Committee filed applications and obtained authority to retain Walding, LLC and Rumberger, Kirk & Caldwell, LLC as co-counsel (Dkt. Nos. 214 and 215).

6. Schedules and Bar Dates

On October 5, 2020, the Debtors filed their Schedules. Any creditor whose Claim is not scheduled in the Schedules or whose Claim is scheduled as disputed, contingent, or unliquidated must file a proof of claim in accordance with the terms of the Bar Date Order (as defined herein).

On October 26, 2020, the Bankruptcy Court entered an order approving, among other things: (1) November 30, 2020, at 5:00 p.m. (prevailing Central Time), as the deadline for all non-Governmental Units (as defined in the Bar Date Order (as defined herein)) to file Claims in the Chapter 11 Cases based on claims

against any Debtor arising prior to the Petition Date that remain unpaid; and (2) March 1, 2021, at 5:00 p.m. (prevailing Central Time), as the deadline for all Governmental Units to file Claims in the Chapter 11 Cases based on claims against any Debtor arising prior to the Petition Date that remain unpaid (Dkt. No. 208) (the “Bar Date Order”).

7. Other Postpetition Matters

(i) Executory Contract Matters

On November 12, 2020, the Bankruptcy Court entered the *Order Authorizing the Debtor to (i) Reject an Executory Contract and (ii) Enter Into a New Contract Pursuant to 11 U.S.C. § 363(b)(1)* (Dkt. No. 251) (the “MM Rejection Order”), authorizing Cane Creek to reject an existing executory contract with MM Mineral Holdings, LLC (“MM”) and enter into a new agreement with MM.

On November 20, 2020, the Debtors filed a *Motion of Debtors to Extend Deadline to Assume or Reject Executory Contracts and Unexpired Leases of Nonresidential Real Property Pursuant to Section 365(d)(4) of the Bankruptcy Code* (Dkt. No. 259) (the “Assumption/Rejection Extension Motion”), pursuant to which the Debtors requested that the Bankruptcy Court extend the Debtors’ time for assuming or rejecting unexpired leases of nonresidential real property pursuant to section 365(d)(4) of the Bankruptcy Code by ninety (90) days, from December 30, 2020 to March 30, 2021. The Assumption/Rejection Extension Motion is currently pending before the Bankruptcy Court.

(ii) Sale Transactions

On September 17, 2020, the Bankruptcy Court entered the *Order (I) Authorizing the Sale of Certain Equipment Free and Clear of All Liens, Claims, Interests, and Encumbrances in the Ordinary Course of Business and (II) Granting Related Relief* (Dkt. No. 111) (the “Sale Order”) authorizing the Debtors to sell certain Equipment (as defined in the Sale Order) in order to generate proceeds to either purchase replacement equipment or refurbish existing equipment. On October 13, 2020, the Debtors issued its Notice of Equipment Sale whereby it sold used equipment for the purchase price of approximately \$1,350,000.000 and used the proceeds for (i) repairing/enhancing existing equipment, and/or (ii) the purchase of new or used equipment.

(iii) Warrior Met Settlement

On November 9, 2020, the Bankruptcy Court entered the *Order Approving Compromise and Settlement* (Dkt. No. 245) (the “Warrior Met Settlement Order”) approving a settlement of certain prepetition litigation between the Debtors and Warrior Met Coal Mining, LLC and/or Warrior Met Coal Land, LLC (together, “Warrior Met”). Pursuant to the Warrior Met Settlement Order, the Debtors agreed to pay Warrior Met an access fee and remove certain property from Warrior Met’s land.

(iv) Removal Extension Motion

On November 20, 2020, the Debtors filed a *Motion of Debtors for Entry of an Order, Pursuant to 28 U.S.C. § 1452 and Bankruptcy Rule 9027, Extending the Removal Deadline* (Dkt. No. 258) (the “Removal Extension Motion”), pursuant to which the Debtors requested that the Bankruptcy Court extend the Debtors’ time for removing certain civil actions by ninety (90) days, from November 30, 2020 to February 28, 2021. The Removal Extension Motion is currently pending before the Bankruptcy Court.

(v) MM Interpleader Action

On October 28, 2020, MM filed an interpleader complaint against Cane Creek, the Administrative and Collateral Agent, and Freddy Hunt, thereby commencing the adversary proceeding captioned *MM Mineral Holdings, LLC v. Cane Creek, LLC, et al.*, Adv. Pro. 20-00045 (the “MM Adversary Proceeding”). On November 18, 2020, the Bankruptcy Court entered an *Order on Motion to Deposit with Court* (Adv. Dkt. No. 12), authorizing MM to deposit \$438,149.61 of disputed ownership funds with the Court Registry Investment System, pending further order of the Bankruptcy Court.

(vi) ***Cook Stay Relief Motion***

On November 20, 2020, Amy Cook, dependent wife and next friend of Micky Cook, individually and on behalf of Cooper Cook and Conner Cook, minor children of Micky Cook, deceased (“Cook”) filed a *Motion for Relief from Automatic Stay* (Dkt. No. 263) (the “Cook Stay Relief Motion”), pursuant to which Cook requested that the Bankruptcy Court lift, modify, or terminate the automatic stay to allow for prosecution of a state law case against Cedar Lake Mining, Inc. to the extent of insurance coverage and against third parties. The Cook Stay Relief Motion is currently pending before the Bankruptcy Court.

**ARTICLE IV.
SUMMARY OF THE PLAN**

This Disclosure Statement contains only a summary of the Plan, a copy of which is included herein as Exhibit A. It is not intended to replace the careful and detailed review and analysis of the Plan, but only to aid and supplement such review. This Disclosure Statement is qualified in its entirety by reference to the Plan, the Plan Supplement, and the exhibits attached thereto and the agreements and documents described therein. If there is a conflict between the Plan and this Disclosure Statement, the provisions of the Plan will govern. You are encouraged to review the full text of the Plan and the Plan Supplement and to read carefully the entire Disclosure Statement, including all exhibits, before deciding how to vote with respect to the Plan.

The Plan reflects the evaluation and analysis undertaken by the Debtors with respect to a number of different business, financial, and legal considerations. Among other things, the Debtors, with the assistance of their advisors, considered both overall enterprise value and the extent to which such value may be available for distribution to the Debtors’ different Classes of stakeholders in light of such parties’ legal and equitable rights. The Committee believes that a litigation trust should be established to reconcile claims, make distributions, and pursue claims that may exist against certain parties that are not Holders of Allowed General Unsecured Claims. The Debtors believe that the Reorganized Debtors should be responsible for reconciling claims, making distributions, and pursuing claims that may exist against certain parties that are not Holders of Allowed General Unsecured Claims. The Debtors further believe that there may not be sufficient funding available for such a litigation trust. The Debtors, the Committee, and other key stakeholders will continue to negotiate the nature and existence of a post-confirmation litigation trust in advance of the Confirmation Hearing.

The Plan is therefore proposed in the nature of a settlement pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019, and the Debtors believe that confirmation of the Plan is in the best interests of the Debtors’ Estates and their creditors.

A. Administrative and Priority Claims

1. Establishment of Administrative Claims Bar Date.

Except as otherwise provided in the Plan or another order of the Bankruptcy Court, any Entity that seeks allowance of an Administrative Claim shall file with the Bankruptcy Court and serve on counsel for

the Debtors or the Reorganized Debtors (as applicable) a request for payment of such Administrative Claim by 5:00 p.m., prevailing Central time, on the Administrative Claims Bar Date. Requests for payment of an Administrative Claim must include at a minimum: (a) the name of the Holder seeking allowance of an Administrative Claim; (b) the amount of the Administrative Claim sought; (c) the basis asserted for allowance of the Administrative Claim; and (d) all supporting documentation that justifies allowance of the Administrative Claim asserted. Any Entity that is required to file and serve a request for allowance of an Administrative Claim by the Administrative Claims Bar Date that fails to file and serve a timely request will be forever barred, estopped, and enjoined from asserting any request for allowance of such Administrative Claim or participating in Distributions under the Plan on account thereof.

A request for payment of an Administrative Claim consistent with the foregoing paragraph will be considered timely filed only if it is filed with the Bankruptcy Court and actually received by parties identified in Article II.A.1 of the Plan by 5:00 p.m., prevailing Central time, on the Administrative Claims Bar Date. Requests for payment of Administrative Claims may not be delivered by facsimile, telecopy, or electronic mail transmission. The Administrative Claims Bar Date shall not apply to (a) Claims for Accrued Professional Compensation, or (b) Allowed Administrative Claims that arise in the ordinary course of the Debtors' business, including Administrative Claims arising from or with respect to the sale of goods or services on or after the Petition Date, executory contracts and unexpired leases, and all Administrative Claims that are Intercompany Claims, shall be paid or otherwise satisfied in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to, such transactions without further action by the Holders of such Administrative Claims or further approval by the Bankruptcy Court.

Notwithstanding anything to the contrary in the Plan, the Debtors' and the Committee's Professionals shall not be required to file a request for payment of any Administrative Claim by the Administrative Claims Bar Date for fees and expenses allowable under sections 330, 331, or 503(b)(2-6) of the Bankruptcy Code, because Professionals will instead file final fee applications as required by the Article II.C of the Plan, the Bankruptcy Code, the Bankruptcy Rules, and the Confirmation Order.

2. Administrative Claims.

In full and final satisfaction, settlement, release, and discharge of each Allowed Administrative Claim, except to the extent that a Holder of an Allowed Administrative Claim and the Debtors or the Reorganized Debtors (as applicable) agree in writing to less favorable treatment for such Administrative Claim, the Debtors or Reorganized Debtors (as applicable) shall pay in Cash, from the assets of the Debtors' Estates, each Holder of an Allowed Administrative Claim any unpaid amount of that Allowed Administrative Claim as follows: (a) on the Effective Date or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as practicable thereafter); (b) if such Claim is Allowed after the Effective Date, on the date the Claim is Allowed or as soon as practicable after it is Allowed (or, if not then due, when such Allowed Administrative Claim becomes due, or as soon as reasonably practicable); (c) when and upon such terms as may be agreed upon by the Holder of the Allowed Administrative Claim and the Debtors or Reorganized Debtors (as applicable); or (d) in accordance with any Final Order of the Bankruptcy Court, as applicable.

3. Professional Compensation and Reimbursement Claims.

The deadline for Professionals to submit final applications for approval of Accrued Professional Compensation to the Bankruptcy Court shall be sixty (60) days after the Effective Date. Any Professional or other Entity that is required to file and serve a final application for approval of Accrued Professional Compensation that fails to file and serve a timely application will be forever barred, estopped, and enjoined

from asserting any request for payment of Accrued Professional Compensation or participating in Distributions under the Plan on account thereof.

All Professionals employed by the Debtors or the Committee (including Ordinary Course Professionals) shall provide to the Debtors an estimate of their paid and unpaid Accrued Professional Compensation through the Effective Date (including an estimate for fees and expenses expected to be incurred after the Effective Date to prepare and prosecute allowance of final fee applications) no later than five (5) days prior to the Confirmation Hearing. Thereafter, but in any event no later than the Effective Date, the Debtors shall fully fund an escrow account to provide for the payment of Accrued Professional Compensation.

Except as otherwise specifically provided in the Plan, on and after the Effective Date, the Reorganized Debtors shall, in the ordinary course of business and without any further notice to action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented fees and expenses of the Professionals on or after the Effective Date, in each case, related to implementation and consummation of the Plan. Upon the Effective Date, any requirement that Professionals comply with Sections 327 through 331 and 1103 of the Bankruptcy Code or any order of the Bankruptcy Court entered before the Effective Date governing the retention of, or compensation for services rendered by, Professionals after the Effective Date shall terminate, and the Reorganized Debtors may employ or pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

4. Priority Tax Claims.

In full and final satisfaction, settlement, release, and discharge of each Allowed Priority Tax Claim, except to the extent that a Holder of an Allowed Priority Tax Claim and the Debtors or the Reorganized Debtors (as applicable) agree in writing to less favorable treatment for such Priority Tax Claim, the Debtors or the Reorganized Debtors (as applicable) shall pay in Cash, from the assets of the Debtors' Estates, each Holder of an Allowed Priority Tax Claim any unpaid amount of that Allowed Priority Tax Claim as follows: (a) on the Effective Date or as soon as practicable thereafter; (b) if such Claim is Allowed after the Effective Date, on the date the Claim is Allowed or as soon as practicable after it is Allowed; (c) through equal annual installment payments in Cash, of a total value, as of the Effective Date, equal to the Allowed amount of such Claim, over a period ending not later than five (5) years after the Petition Date; (d) when and upon such terms as may be agreed upon by the Holder of the Allowed Priority Tax Claim and the Debtors or Reorganized Debtors (as applicable); or (d) in accordance with any Final Order of the Bankruptcy Court, as applicable.

B. Classification and Treatment of Claims and Equity Interests

1. Summary.

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and controversies resolved pursuant to the Plan. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Equity Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise and settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Equity Interests and is fair, equitable, and is within the range of reasonableness. All distributions made to Holders of Allowed Claims and Allowed Equity Interests in any Class are intended to be and shall be final.

Except for the Claims addressed in Article II of the Plan, all Claims and Equity Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or an Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and the remainder is classified in one or more other Classes to the extent that any portion of the Claim or Equity Interest qualifies within the description of such other Classes, without duplication. A Claim or an Equity Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date. Further, the provision in the Plan for a Class of Claims or Equity Interests does not presume, and does not constitute any admission or determination regarding, the existence or validity of any Claim (including any purported Secured Claims) or Equity Interest within such Class.

The Plan is intended to deal with all Claims against and Equity Interests in the Debtors of whatever character, whether known or unknown, whether or not with recourse, whether or not contingent or unliquidated, and whether or not previously Allowed by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code, including unclassified Claims. However, only Holders of Allowed Claims and Equity Interests will receive any distribution under the Plan, and no Holder of a Claim or Equity Interest shall receive any distribution unless and until such Claim or Equity Interest is Allowed. For purposes of determining Pro Rata distributions under the Plan, Disputed Claims shall be included in the Class in which such Claims would be included if Allowed, until such Claims are finally disallowed. The Plan will not provide any distributions on account of a Claim or Equity Interest to the extent that such Claim or Equity Interest has been disallowed, released, withdrawn, waived, or otherwise satisfied or paid as of the Effective Date.

In accordance with section 1123(a)(1) of the Bankruptcy Code, as set forth above, the Debtors have not classified Administrative Claims, Accrued Professional Compensation Claims, or Priority Tax Claims, and the Plan describes their treatment under the Plan in Article II.

The following table classifies Claims against and Equity Interests in the Debtors for all purposes, including voting, confirmation, and Distribution under the Plan and in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code, unless a Final Order provides otherwise. Each Class set forth below is treated under the Plan as a distinct Class for voting and Distribution purposes.

As set forth in the following table, Classes 3 – 5 and 7 are Impaired under the Plan. The treatment of Allowed Claims and Equity Interests in the Impaired Classes under the Plan is in full and complete satisfaction of the legal, contractual, and equitable rights of each Holder of an Allowed Claim or Equity Interest in each such Impaired Class. Subject to the provisions of the Solicitation Procedures Order, Holders of Claims in the Impaired Classes 3 – 4 are entitled to vote on the Plan. Because Holders of Claims and Equity Interests in Classes 5 and 7 will not receive any distribution under the Plan, they are conclusively presumed to have rejected the Plan, and are not entitled to vote. Holders in Claims in Classes 1, 2 and 6 are Unimpaired, deemed to accept the Plan, and not entitled to vote on the Plan.

2. Classification and Treatment of Claims and Equity Interests.

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Rights</u>
1	Other Secured Claims	Unimpaired	Deemed to Accept
2	Other Priority Claims	Unimpaired	Deemed to Accept
3	Credit Agreement Secured Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Intercompany Claims	Impaired	Deemed to Reject
6	Intercompany Equity Interests	Unimpaired	Deemed to Accept
7	FM Equity Interests	Impaired	Deemed to Reject

(i) Other Secured Claims (Class 1)

(a) **Classification:** Class 1 consists of Other Secured Claims.

(b) **Treatment:** Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive the following, at the Debtors' option:

(i) payment in full in Cash equal to the amount of such Allowed Other Secured Claim;

(ii) the collateral securing its Allowed Other Secured Claim and payment of any interest required under section 506(b) of the Bankruptcy Code;

(iii) Reinstatement of such Allowed Other Secured Claim; or

(iv) such other treatment rendering such Allowed Other Secured Claim Unimpaired.

(c) **Voting:** Class 1 is Unimpaired, and, therefore, Holders of Other Secured Claims in Class 1 are deemed to accept and not entitled to vote to accept or reject the Plan.

(ii) Other Priority Claims (Class 2)

(a) **Classification:** Class 2 consists of Other Priority Claims.

(b) **Treatment:** In full and final satisfaction, settlement, release, and discharge of each Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim, on or as soon as practicable after the later of the Effective Date or the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, will either be paid the full amount of such Holder's Allowed Other Priority Claim, or such lesser amount as the Debtors or the Reorganized Debtors (as applicable) and the Holder of the Other Priority Claim may agree to in writing, in Cash.

(c) **Voting:** Class 2 is Unimpaired, and, therefore, Holders of Other Priority Claims in Class 2 are deemed to accept and not entitled to vote to accept or reject the Plan.

(iii) Credit Agreement Secured Claims (Class 3)

(a) **Classification:** Class 3 consists of Credit Agreement Secured Claims.

(b) **Treatment:** On the Effective Date, Holders of Allowed Credit Agreement Secured Claims will become bound by the A&R Credit Documents and receive, in full and final satisfaction, settlement, release, and discharge of each Allowed Credit Agreement Secured Claim, their Pro Rata share of each of the A&R Term Loans. On the Effective Date, except as set forth in Article IV.F hereof, the Credit Agreement shall be deemed replaced by the A&R Credit Agreement, without the need for any Holder of an Allowed Credit Agreement Secured Claim that does not vote for the Plan or votes to reject the Plan to execute the A&R Credit Documents, including, without limitation, the A&R Credit Agreement, and each Lien and security interest that secures obligations arising under the Credit Agreement shall be reaffirmed, ratified, and deemed granted by each Reorganized Debtor to secure all obligations of the Reorganized Debtors arising under the A&R Credit Agreement.

(c) **Voting:** Class 3 is Impaired and, therefore, Holders of Credit Agreement Secured Claims in Class 3 are entitled to vote to accept or reject the Plan.

(iv) General Unsecured Claims (Class 4)

(a) **Classification:** Class 4 consists of General Unsecured Claims.

(b) **Treatment:** Each Holder of an Allowed General Unsecured Claim not otherwise paid during the pendency of the Chapter 11 Cases (other than any Holder of a Credit Agreement Deficiency Claim) shall receive its Pro Rata share of the General Unsecured Creditor Distribution.¹⁰

(c) **Voting:** Class 4 is Impaired and, therefore, Holders of General Unsecured Claims in Class 4 are entitled to vote to accept or reject the Plan.

(v) Intercompany Claims (Class 5)

(a) **Classification:** Class 5 consists of Intercompany Claims.

(b) **Treatment:** On the Effective Date or as soon thereafter as is practicable, Intercompany Claims may be extinguished or compromised by distribution, contribution, or otherwise Reinstated, at the sole option of the Debtors or the Reorganized Debtors (as applicable) on or after the Effective Date.

¹⁰ The Committee believes that certain unencumbered assets may exist that could be monetized for the benefit of Holders of Allowed General Unsecured Claims. The Debtors reserve the right to challenge the Committee's contention. The Debtors, the Committee, and other key stakeholders will continue to discuss the nature, extent, and treatment of any unencumbered assets in advance of the Confirmation Hearing.

(c) **Voting:** Class 5 is Impaired. Because the Holders of Intercompany Claims are not expected to receive any distributions under the Plan, such Holders of Intercompany Claims are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Intercompany Claims.

(vi) Intercompany Equity Interests (Class 6)

(a) **Classification:** Class 6 consists of Intercompany Equity Interests.

(b) **Treatment:** On the Effective Date, all Intercompany Equity Interests shall remain effective, outstanding, and be Reinstated and shall be owned and held, directly or indirectly, by Reorganized FM.

(c) **Voting:** Class 6 is Unimpaired and, therefore, Holders of Intercompany Equity Interests in Class 6 are deemed to accept and not entitled to vote to accept or reject the Plan.

(vii) FM Equity Interests (Class 7)

(a) **Classification:** Class 7 consists of FM Equity Interests.

(b) **Treatment:** On the Effective Date, all FM Equity Interests shall be deemed cancelled, released, discharged, and extinguished without further action by the Debtors or Reorganized Debtors.

(c) **Voting:** Class 7 is Impaired. Holders of Equity Interests in Class 7 are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of FM Equity Interests are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such FM Equity Interests.

3. **Objections and Defenses.**

Except as otherwise provided in the Plan or prior order of the Bankruptcy Court, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' (as applicable) rights with respect to any Claim, including, without limitation, all rights in respect of Causes of Action, or legal or equitable defenses to, or setoffs or recoupments against any Claim.

Further, except as otherwise provided in the Plan or prior order of the Bankruptcy Court, the failure of any party to object to any Claim in the Chapter 11 Cases prior to the Effective Date shall be without prejudice to the rights of the Reorganized Debtors to contest, object to, or otherwise defend against such Claim if and when such Claim is sought to be enforced by the Holder of such Claim. Procedures for objections to Claims are set forth in Article VI of the Plan.

4. **Survival and Release of Liens.**

Notwithstanding section 1141(c) or any other provision of the Bankruptcy Code, all pre-petition Liens on property of the Debtors held with respect to any Allowed Secured Claim shall survive the Effective Date and continue in accordance with the contractual terms or statutory provisions governing such Claim until such Allowed Secured Claim is satisfied, at which time such Lien shall be released, shall be deemed

null and void, and shall be unenforceable for all purposes; provided, however, that the Debtors or the Reorganized Debtors (as applicable) may condition delivery of any final payment upon receipt of an executed release of the Lien.

Any and all Liens securing any Secured Claim that is not an Allowed Claim shall be released, shall be deemed null and void, and shall be unenforceable for all purposes. Nothing in the Plan shall preclude the Debtors or the Reorganized Debtors (as applicable) from challenging the validity of any alleged Lien on any asset of any Debtor or the value of the property that secures any alleged Lien, and all such rights are expressly preserved. By way of further clarification, the rights to surcharge the collateral securing the Credit Agreement Secured Claims has been waived to the extent and subject to the exceptions set forth in paragraph 22 of the Final Cash Collateral Order.

5. Surcharge Under Section 506(c) of the Bankruptcy Code.

Except as otherwise set forth in the Plan or any prior order of the Bankruptcy Court, all rights of Holders of Secured Claims under the Plan are subject to the rights of the Debtors or the Reorganized Debtors (as applicable) to surcharge the applicable collateral pursuant to section 506(c) of the Bankruptcy Code, which rights are expressly preserved.

6. Estimation of Claims.

Before or after the Effective Date, the Debtors or the Reorganized Debtors (as applicable) may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the claims register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim that is disputed, contingent, or unliquidated, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan, including for purposes of distributions. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such holder has filed a motion requesting the right to seek such reconsideration on or before twenty one (21) days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

7. Distribution Caps.

In no event shall any Holder of an Allowed Claim receive a distribution of a value exceeding one hundred percent (100%) of the amount of such Holder's Allowed Claim.

8. Special Provision Governing Unimpaired Claims.

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' (as applicable) rights with respect to any Unimpaired Claim, including, without limitation, all rights in respect of Causes of Action, or legal or equitable defenses to or setoffs or recoupments against any Unimpaired Claim.

9. Elimination of Vacant Classes.

Any Class of Claims that does not have a holder of an Allowed Claim, or a Claim temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing, shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

10. Presumed Acceptance by Voting Classes That Do Not Vote.

If a Class contains Claims eligible to vote on the Plan and no holder of a Claim in such Class eligible to vote on the Plan votes to accept or reject the Plan, the Plan shall be presumed accepted by the Class.

11. Nonconsensual Confirmation.

If any Impaired Class of Claims entitled to vote does not vote to accept the Plan, the Debtors reserve the right to amend the Plan, to undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, or both. With respect to Impaired Classes that are deemed to reject the Plan, the Debtors intend to request that the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code notwithstanding the deemed rejection of the Plan by those Classes.

C. Means of Implementation of the Plan

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distribution, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Equity Interests, and controversies resolved pursuant to the Plan.

1. Substantive Consolidation for Voting and Distribution Purposes.

Except as otherwise provided in the Plan, the Plan treats the Debtors as comprising a single Estate solely for the purposes of voting on the Plan, confirming the Plan, and making Distributions pursuant to the Plan with respect to Allowed Claims. Accordingly, voting on the Plan shall be conducted and counted on a consolidated basis.

On the Effective Date, (a) the assets of the Debtors and their Estates will be merged and/or treated as if they are merged into a consolidated Estate for the purpose of making distributions on account of Allowed Claims against the Debtors and their Estates; (b) any Claim filed or asserted against any of the Debtors will be deemed a Claim against the consolidated Estate (and any duplication of claims arising from both primary operative documents and guaranty and/or other secondary obligations, or other Claims for which more than one Debtor may be liable, shall be eliminated and all such Claims against the Debtors shall be treated as a single Claim that eliminates such duplications); (c) any obligation of any of the Debtors or their Estates will be deemed to be an obligation of the consolidated Estate; (d) all guarantees by one of the Debtors in favor of any of the other Debtors shall be eliminated, (e) all guarantees executed by any of the Debtors in favor of any Creditor shall be deemed to be a single obligation, and (f) any and all Intercompany Claims shall be eliminated and not entitled to any distribution under the Plan. For the avoidance of doubt, Holders of Allowed Claims or Allowed Equity Interests who assert identical Claims against or Equity Interests in multiple Debtors shall be entitled to only a single satisfaction of such Claims or Equity Interests.

This substantive consolidation shall not (i) affect any Debtor's status as a separate and independent legal entity; (ii) affect the Debtors' organizational structure; (iii) constitute a change of control of any Debtor for any purpose; (iv) cause a merger or consolidation of any legal entities; (v) cause a transfer of any Debtor or Estate assets; (vi) affect any valid, enforceable, and unavoidable Liens (other than any Liens that secure any Claims eliminated as a result of the substantive consolidation and any Liens against any collateral that cease to exist as a result of the substantive consolidation); (vii) cause any Lien to attach to any property of any Debtor or Estate to which such Lien would not attach in the absence of the substantive consolidation provided for in this Article (*e.g.*, holders of floating Liens on particular classes of property shall not attach to property of a Debtor that did not secure such Claim on the Effective Date); (viii) create new collateral with respect to any Lien, charge, or other encumbrance securing the payment or performance of any Claim; (ix) make any Debtor or Estate assets or proceeds thereof available for the satisfaction of any Secured Claim that would not be available for the satisfaction of such Secured Claim in the absence of the substantive consolidation provided for in this Article; (x) create any Claim in a Class different from the Class in which such Claim would have been placed in the absence of this substantive consolidation; (xi) change the priority or nature of any Claim; (xii) affect any Debtor's independent ownership of any assets for any purposes other than the substantive consolidation described herein; or (xiii) result in the substantive consolidation of the Debtors. Except as otherwise expressly provided by or permitted in the Plan, all Debtors shall continue to exist as separate and independent legal entities.

The treatment set forth in this Article shall not (a) affect any Cause of Action available to any Debtor or Estate, including Chapter 5 Actions (except with respect to Intercompany Claims) or the ability of the Debtors or Reorganized Debtors (as applicable) to pursue such Causes of Action or object to Claims, and all such Causes of Action and rights of objection are preserved as they existed immediately before the Effective Date for the Debtors or Reorganized Debtors (as applicable) to pursue; (b) constitute any admission by any Debtor, Reorganized Debtor, or Estate with respect to any Cause of Action or right of objection; (c) have any estoppel effect with respect to any Cause of Action or right of objection; or (d) constitute or affect admissible evidence in connection with any litigation of any Cause of Action or objection. The treatment described in this Article serves only as a mechanism to effect a fair distribution of value to the Holders of Allowed Claims.

2. Restructuring Transactions.

On the Effective Date or as soon as reasonably practicable thereafter, the Debtors or Reorganized Debtors (as applicable) may take all actions consistent with the Plan as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Restructuring Transactions under and in connection with the Plan.

On or after the Effective Date, without prejudice to the rights of any party to a contract or other agreement with any Reorganized Debtor, each Reorganized Debtor may, in its sole discretion, take such action as permitted by applicable law, and such Reorganized Debtor's organizational documents, as such Reorganized Debtor may determine is reasonable and appropriate, including, without limitation, causing: (i) a Reorganized Debtor to be merged into another Reorganized Debtor or an affiliate of a Reorganized Debtor; (ii) a Reorganized Debtor to be dissolved; (iii) the legal name of a Reorganized Debtor to be changed; or (iv) the closure of a Reorganized Debtor's Chapter 11 Case on the Effective Date or any time thereafter. None of the transactions contemplated in Article IV.B of the Plan shall constitute a change of control under any agreement, contract, or document of the Debtors.

On the Effective Date or as soon thereafter as is reasonably practicable, the Reorganized Debtors may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, or necessary or appropriate to effectuate the Plan, including, without limitation: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation,

restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms to which the applicable parties agree; (iii) the filing of appropriate certificates or articles of incorporation and amendments thereto, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable law; (iv) the Restructuring Transactions; and (v) all other actions that the applicable entities determine to be necessary or appropriate, including, without limitation, making filings or recordings that may be required by applicable law.

On the Effective Date, and provided that the Board of Directors of the Alabama Coal Cooperative has provided its written approval, if such written approval is required, all of the Debtors' membership interests in the Alabama Coal Cooperative shall be deemed held by one of the Reorganized Debtors, as will be disclosed in the Plan Supplement.

3. Sources of Consideration for Distributions under the Plan.

All Distributions shall be funded by existing Cash on hand with the Debtors and their Estates as of the Effective Date or the assets of the Reorganized Debtors.

4. Vesting of Assets.

Except as otherwise provided in the Plan, any agreement, instrument or other document incorporated in the Plan or the Plan Supplement, or pursuant to a Final Order of the Bankruptcy Court, on the Effective Date, all property in each Estate, all Causes of Action and any property acquired by any of the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances. On and after the Effective Date, except as otherwise provided in the Plan or the Confirmation Order, each Reorganized Debtor may operate its business and may use, acquire or dispose of property and compromise or settle any Claims, Equity Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur on or after the Effective Date for professional fees, disbursements, expenses, or related support services without application to the Bankruptcy Court. Notwithstanding the foregoing, the escrow provided for in Article II.C of the Plan shall not vest in any of the Reorganized Debtors; *provided, however*, when all Claims for Accrued Professional Compensation owing to Professionals have been resolved, any remaining amount in such escrow shall promptly be paid to the Reorganized Debtors without any further action or order of the Bankruptcy Court.

5. Continued Corporate Existence.

Except as otherwise provided in the Plan, any agreement, instrument or other document incorporated in the Plan or the Plan Supplement, or as a result of any Restructuring Transactions, on the Effective Date, each Debtor shall continue to exist after the Effective Date as a separate corporation or other form of Entity under governing state or foreign law, as the case may be, with all the powers of such corporation or other form of Entity, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of formation and operating agreement (or other analogous formation documents) in effect before the Effective Date, except to the extent such certificate of formation and operating agreement (or other analogous formation documents) are amended by the Plan or otherwise, and to the extent such documents are amended,

such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable law).

6. Surety Bonds and Letters of Credit.

On the Effective Date, all of the Debtors' existing surety and reclamation bonds, indemnity agreements and collateral trust agreements (the "Surety Obligations") shall be reinstated, reaffirmed and assumed, to the extent applicable, or be entirely replaced and released, on commercially reasonable terms. A definitive statement of the Debtors final intention on the handling of the Surety Obligations shall be included in the final Plan and Confirmation Order. The Debtors' surety and reclamation bonds are secured by the \$4,000,000 letter of credit issued under the Revolver. Accordingly, no cash is returned to the Debtors upon completion of a successful bond release. Any bond releases will only result in a reduction of the net bond amount outstanding under the Debtors' surety and reclamation bond program.

7. Cancellation of Existing Securities and Agreements.

Except for purposes of evidencing a right to Distributions under the Plan and with respect to the A&R Credit Documents as provided under the Plan, on the Effective Date, all agreements and other documents evidencing Claims or rights of any Holder of a Claim or Equity Interest against any of the Debtors, including, but not limited to, all indentures, notes, bonds, and share certificates evidencing such Claims and Equity Interests and any agreements or guarantees related thereto shall be cancelled, terminated, deemed null and void and satisfied, as against the Debtors, but not as against any other Entity unless specifically released by or under the Plan.

8. Governing Bodies.

The composition of the New Boards shall be disclosed in the Plan Supplement. The members of the applicable governing body of each Debtor prior to the Effective Date, in their capacities as such, shall be deemed to have resigned or shall otherwise cease to serve as a member of the applicable governing body of the applicable Debtor on the Effective Date.

9. Exemption from Certain Taxes and Fees.

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, transfer tax, sale or use tax, mortgage recording tax or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee or governmental assessment. Such exemption under section 1146(a) of the Bankruptcy Code specifically applies, without limitation, to: (1) the creation and recording of any mortgage, deed of trust, Lien or other security interest; (2) the making or assignment of any lease or sublease; (3) any Restructuring Transaction; (4) the issuance, distribution and/or sale of any securities or Equity Interests of the Debtors or the Reorganized Debtors; and (5) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including (a) any merger agreements, (b) agreements of consolidation, restructuring, disposition, liquidation or dissolution, (c) deeds, (d) bills of sale, or (e) instruments of transfer or assignment executed in connection with any Restructuring Transaction occurring under the Plan.

10. Exemption from Securities Laws.

The issuance of and the distribution under the Plan of the New FM Units shall be exempt from registration under the Securities Act and any other applicable securities laws pursuant to section 1145 of the Bankruptcy Code. The New FM Units may be resold without registration under the Securities Act or other federal securities laws pursuant to the exemption provided by section 4(a)(1) of the Securities Act, unless the holder is an “underwriter” with respect to such New FM Units, as that term is defined in section 1145(b) of the Bankruptcy Code. In addition, such section 1145 exempt New FM Units generally may be resold without registration under state securities laws pursuant to various exemptions provided by the respective laws of the several states.

11. Operations of the Debtors Between the Confirmation Date and the Effective Date

The Debtors shall continue to operate as debtors in possession during the period from the Confirmation Date through and until the Effective Date. The retention and employment of the Professionals retained by the Debtors shall terminate as of the Effective Date; *provided, however*, that the Debtors shall exist, and their Professionals shall be retained, after such date with respect to applications filed under sections 330 and 331 of the Bankruptcy Code.

12. Automatic Stay.

The automatic stay provided for under section 362 of the Bankruptcy Code shall remain in effect in the Chapter 11 Cases until the Effective Date at which time the injunctions described in the Plan shall come into effect with no gap in time.

13. The Committee.

Upon the Effective Date, the Committee shall be deemed dissolved, and their members shall be deemed released and discharged from all further authority, duties, responsibilities, and obligations relating to and arising from or in connection with the Chapter 11 Cases. The retention and employment of the Professionals retained by the Committee shall be deemed terminated as of the Effective Date; *provided, however*, that the Committee shall continue to exist, and their Professionals shall continue to be retained, after such date with respect to applications filed under sections 330 and 331 of the Bankruptcy Code and, as appropriate, motions seeking the enforcement of the provisions of the Plan or the Confirmation Order.

14. Preservation of Causes of Action.

In accordance with section 1123(b) of the Bankruptcy Code, unless expressly stated otherwise in the Plan, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action (including, without limitation, any Causes of Action identified in the Schedule of Retained Causes of Action and any Chapter 5 Actions), whether arising before or after the Petition Date, and such rights to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such Causes of Action in accordance with the best interests of the Reorganized Debtors, and the Reorganized Debtors, through their authorized agents or representatives, shall retain and have the exclusive right, authority and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw or litigate to judgment any such Causes of Action, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order or approval of the Bankruptcy Court. As of the date of the filing of this Disclosure Statement, the Debtors have not identified any Chapter 5 Actions against Holders of General Unsecured Claims the prosecution of which the Debtors believe would be in the best interests of the Debtors’ Estates. **No Entity may rely on the absence of a**

specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Causes of Action against it as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against it. The Debtors or the Reorganized Debtors (as applicable) expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Bankruptcy Court order, the Debtors or Reorganized Debtors (as applicable) expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Causes of Action upon, after or as a consequence of the confirmation or consummation of the Plan.

15. A&R Credit Documents

On the Effective Date, the A&R Credit Documents shall be executed and delivered, and the Reorganized Debtors shall be authorized to execute, deliver and enter into, the A&R Credit Agreement and the other A&R Credit Documents, without the need for any further corporate action and without further action by the Holders of Claims or Equity Interests.

All Liens and security interests granted and continuing pursuant to the A&R Credit Documents shall be (i) valid, binding, perfected, and enforceable Liens and security interests in the personal and real property described in and subject to such document, with the priorities established in respect thereof under applicable law, (ii) granted in good faith and deemed not to constitute a fraudulent conveyance or fraudulent transfer, and (iii) not otherwise subject to avoidance, recharacterization, or subordination (whether equitable, contractual or otherwise) under any applicable law. The Debtors, the Reorganized Debtors, and the Entities granted such Liens and security interests are authorized to make all filings and recordings and to obtain all governmental approvals and consents necessary to establish, attach, and perfect such Liens and security interests under any applicable law and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interest to third parties.

16. Authorization, Issuance, and Delivery of New FM Units

On the Effective Date, the Debtors are authorized to issue or cause to be issued and shall issue the New FM Units without the need for any further corporate or shareholder action. Fifty-one percent (51%) of the New FM Units will be issued to John McNab, and forty-nine percent (49%) of the New FM Units will be issued to Michael Jamison.

D. Provisions Governing Distributions

1. Distribution Dates.

Distributions to Holders of Claims shall be made as provided in Articles II and III of the Plan. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

2. Disbursing Agents.

All Distributions under the Plan shall be made by the Reorganized Debtors as Disbursing Agent or such other entity designated by the Reorganized Debtors as Disbursing Agent.

The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform their duties under the Plan, (b) make all Distributions contemplated by the Plan, (c) employ professionals to represent them with respect to their responsibilities, and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, the Plan, or deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

The Disbursing Agent shall only be required to act and make Distributions in accordance with the terms of the Plan and shall have no (a) liability for actions taken in accordance with the Plan or in reliance upon information provided to them in accordance with the Plan or (b) obligation or liability for Distributions under the Plan to any party who does not hold an Allowed Claim at the time of Distribution or who does not otherwise comply with the terms of the Plan.

Except as otherwise ordered by the Bankruptcy Court, any reasonable fees and expenses incurred by the Disbursing Agent (including, without limitation, reasonable attorneys' fees and expenses) on or after the Effective Date shall be paid in Cash by the Reorganized Debtors in the ordinary course of business.

3. Record Date for Distributions.

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred under Bankruptcy Rule 3001 on or prior to the Voting Record Date will be treated as the Holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the Voting Record Date. The Debtors or Reorganized Debtors (as applicable) shall have no obligation to recognize any transfer of any Claim occurring after the Voting Record Date. In making any Distribution with respect to any Claim, the Reorganized Debtors shall, in the Reorganized Debtors' sole discretion, be entitled instead to recognize and deal with, for all purposes hereunder, only the Entity that is listed on the Proof of Claim filed with respect thereto or identified on the Schedules as the Holder thereof as of the close of business on the Voting Record Date and upon such other evidence or record of transfer or assignment that was known to the Debtors or Reorganized Debtors (as applicable) as of the Voting Record Date and is available to the Reorganized Debtors.

4. Delivery of Distributions.

Subject to Bankruptcy Rule 9010 and except as otherwise provided in the Plan, Distributions to the Holders of Allowed Claims shall be made by the Disbursing Agent at (a) the address of each Holder as set forth in the Schedules, unless superseded by the address set forth on Proofs of Claim filed by such Holder, or (b) the last known address of such Holder if no Proof of Claim is filed or if the Debtors or Reorganized Debtors (as applicable) have been notified in writing of a change of address.

5. Undeliverable and Unclaimed Distributions.

In the event that any Distribution to any Holder of an Allowed Claim made by the Disbursing Agent is returned as undeliverable, no Distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then current address of such Holder or is notified in writing of such Holder's then-current address. Undeliverable distributions shall remain in the possession of the Reorganized Debtors until such time as a distribution becomes undeliverable, as set forth below. Undeliverable Cash shall not be entitled to any interest, dividends or other accruals of any kind.

Any Distribution that remains uncashed for a period of one hundred twenty (120) days shall be deemed undeliverable and the Distribution shall revert to the Reorganized Debtors, free and clear of such

Holder's interest in the Distribution, to be distributed pursuant to the Plan. The Holder, shall be forever barred from asserting any such Claim on account of the Distribution against the Debtors, the Reorganized Debtors, or their respective assets. No such funds or other property shall escheat to any federal, state, or local government or other entity for any reason. Nothing contained in the Plan shall require the Debtors or Reorganized Debtors (as applicable) to attempt to locate any Holder of an Allowed Claim.

6. Manner of Cash Payments Under the Plan.

Except as otherwise provided in the Plan, Cash payments made under the Plan shall be in United States dollars by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Disbursing Agent.

7. Compliance with Tax Requirements.

The Disbursing Agent may withhold and pay to the appropriate taxing authority all amounts required to be withheld under the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or Distribution on account of Claims. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed to the applicable Holders of the Claims. For tax purposes, Distributions received in respect of Allowed Claims will be allocated first to the principal amount of Allowed Claims with any excess allocated, if applicable, to unpaid interest that accrued on such Claims. The Disbursing Agent shall be authorized to collect such tax information from the applicable Holders of Claims (including social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan. In order to receive Distributions under the Plan, all Holders of Claims that are entitled to receive Distributions under the Plan will need to identify themselves to the Disbursing Agent and provide tax information to the extent the Disbursing Agent deems appropriate (including completing the appropriate Form W-8 or Form W-9, as applicable to each Holder). The Disbursing Agent may refuse to make a Distribution to any Holder of a Claim that is entitled to receive a Distribution but that fails to furnish such information within the time period specified by the Disbursing Agent and such Distribution shall be waived and forfeited under the Plan. If the Disbursing Agent fails to withhold in respect of amounts received or distributable with respect to any such Holder and such Disbursing Agent is later held liable for the amount of such withholding, such Holder shall reimburse the Disbursing Agent for such liability.

Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any taxing authority, including income, withholding, and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Disbursing Agent in connection with such distribution.

8. Interest on Claims.

Except as specifically provided for in the Plan or the Confirmation Order or required by the Bankruptcy Code, interest shall not accrue on Claims and no Holder of a Claim shall be entitled to interest on any Claim accruing on or after the Petition Date. Interest shall not accrue on any General Unsecured Claim that is a Disputed Claim in respect of the period from the Effective Date to the date a final Distribution is made thereon if and after that Disputed Claim becomes an Allowed Claim. Except as expressly provided in the Plan or in a Final Order of the Bankruptcy Court, no prepetition Claim shall be Allowed to the extent that it is for postpetition interest or similar charges.

9. Setoff and Recoupment.

The Debtors or Reorganized Debtors (as applicable) may, but shall not be required to, set off against, or recoup from, any Claim and the Distributions to be made under the Plan in respect thereof, any Claims, rights, Causes of Action, or defenses of any nature whatsoever that any of the Debtors or the Estates may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Reorganized Debtors, or the Estates of any right of Claim, claim, defense, Cause of Action, right of setoff or recoupment that any of them may have against the Holder of any Claim.

10. De Minimis Distributions; Charitable Donation.

Notwithstanding anything to the contrary herein, the Reorganized Debtors shall not be required to make a Distribution to any Holder if the dollar amount of the Distribution is less than fifty dollars (\$50) or otherwise so small that the cost of making that Distribution exceeds the dollar amount of such Distribution. The Reorganized Debtors may hold the Distributions to be made to such Holder until the aggregate amount of such Distributions is in an amount equal to or greater than the greater of fifty dollars (\$50.00) or such amount that exceeds the cost of making the Distribution. If the aggregate Distributions of such Holder do not meet or exceed such amount, then the Reorganized Debtors shall not be required to make such Distributions to such Holder.

On or about the time that the final Distribution is made, the Reorganized Debtors may make a charitable donation with undistributed funds if, in the reasonable judgment of the Reorganized Debtors, the cost of calculating and making the final Distribution of the remaining funds is excessive in relation to the benefits to the Holders of Claims who would otherwise be entitled to such Distributions, and such charitable donation is provided to an entity not otherwise related to the Debtors or Reorganized Debtors (as applicable).

11. Statutory Fees.

All fees due and payable under section 1930 of title 28 of the United States Code prior to the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Reorganized Debtors, on behalf of the Debtors, shall pay any and all such fees payable by the Debtors, when due and payable, and shall file with the Bankruptcy Court quarterly reports for each of the Debtors, in a form reasonably acceptable to the Bankruptcy Administrator. Each Debtor shall remain obligated to pay fees under section 1930 of title 28 of the United States Code until the earliest of that particular Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

12. No Distributions on Late-Filed Claims.

Except as otherwise provided in a Final Order of the Bankruptcy Court, any Claim as to which a Proof of Claim was required to be filed and was first filed after the applicable Bar Date in the Chapter 11 Cases shall automatically be deemed a late-filed Claim that is disallowed in the Chapter 11 Cases, without the need for (a) any further action by the Debtors or Reorganized Debtors (as applicable), or (b) an order of the Bankruptcy Court.

13. Claims Paid or Payable by Third Parties.

Except as otherwise provided herein, the Debtors or Reorganized Debtors (as applicable) shall reduce a Claim, and such Claim shall be disallowed, without a Claims objection having to be filed and without any further notice to any party, or action, order, or approval of the Bankruptcy Court, to the extent

that the Holder of such Claim receives payment on account of such Claim from a party that is not a Debtor, a Reorganized Debtor, or the Disbursing Agent. To the extent a Holder of a Claim (i) receives a distribution under the Plan on account of such Claim and receives payment from a party that is not a Debtor, a Reorganized Debtor, or the Disbursing Agent on account of such Claim, and (ii) the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the Allowed amount of such Claim, the Holder shall, within two weeks of receipt thereof, repay or return to the Debtors or Reorganized Debtors (as applicable) the portion of the Plan distribution (up to the full amount of the Plan distribution) that, together with the payment from the third party, exceeds 100% of the Allowed amount of the Claim. Any and all rights of the Debtors or Reorganized Debtors (as applicable) to seek return or repayment of a distribution under the Plan from the Holder of a Claim on account of payment of such Claim by a party that is not a Debtor, a Reorganized Debtor, or the Disbursing Agent are expressly reserved.

No distributions under the Plan shall be made on account of any Allowed Claim that is payable by a third party, including pursuant to one of the Debtors' Insurance Policies, until the holder of such Allowed Claim has exhausted all remedies with respect to such third party or Insurance Policy. To the extent that one or more of the Debtors' insurers or another third party agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then upon (i) execution such agreement and (ii) the Debtors or Reorganized Debtors (as applicable) receiving notice thereof, the applicable portion of such Claim may be expunged without a Claim objection having to be filed and without any further notice to any party, or action, order, or approval of the Bankruptcy Court.

14. Distributions Free and Clear.

Except as otherwise provided herein, any Distributions under the Plan shall be free and clear of any Liens, Claims, and encumbrances, and no other Entity shall have any interest (legal, beneficial or otherwise) in any Estate property distributed pursuant to the Plan.

15. Not Securities; Section 1145 Exemption.

The respective rights of the Holders of Claims and Equity Interests arising under the Plan are not intended to be "securities" under applicable laws, but the Debtors do not represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the Debtors intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws to apply to their issuance under the Plan.

E. Disputed Claims and Claim Objections

1. Payments and Distributions on Disputed Claims and Claims That Have Otherwise Not Been Allowed.

Notwithstanding any provision in the Plan to the contrary, except as otherwise agreed by the Reorganized Debtors in their sole discretion, no partial payments and no partial distributions will be made with respect to a Disputed Claim or Claim that has otherwise not been Allowed until such disputes are resolved by settlement or Final Order and the Claim has been Allowed.

2. Disputed Claims Reserve.

On each date Distributions are to be made under the Plan to Holders of Allowed Claims, the Reorganized Debtors shall retain on account of Disputed Claims an amount the Reorganized Debtors estimate is necessary to fund the Pro Rata share of such Distributions to Holders of Disputed Claims if such

Disputed Claims were Allowed (or such lesser amount as may be estimated in accordance with Article VI.D of the Plan), with any Disputed Claims that are unliquidated or contingent being reserved for in an amount reasonably determined by the Reorganized Debtors (the “*Disputed Claims Reserve*”).

Cash retained on account of such Disputed Claims shall be retained in the Disputed Claims Reserve for the benefit of the Holders of such Disputed Claims pending a determination of their entitlement thereto under the terms of the Plan. To the extent that the property placed in the Disputed Claims Reserve consists of Cash, that Cash may be deposited in an interest-bearing account at a qualified institution.

If any Disputed Claim is disallowed or Allowed in an amount that is lower than the aggregate assets retained in the Disputed Claims Reserve on account of such Disputed Claim, then, the excess assets reserved for such Claim shall automatically revert in the Reorganized Debtors and thereafter may be used consistent with the provisions of the Plan without restriction. Such assets shall not escheat to any federal, state, or local government or other Entity for any reason.

Payments on any Disputed Claim that becomes an Allowed Claim shall be distributed by the Disbursing Agent from the Disputed Claims Reserve on the next scheduled Distribution date after the Claim is Allowed. Distributions shall be made only to the extent of the aggregate distributions that the Holder of any such Allowed Claim would have received had such Claim been Allowed as of the Effective Date (less any taxes paid with respect to amounts held in the Disputed Claims Reserve). Distributions to each Holder of a Disputed Claim that has become an Allowed Claim (and to the extent that the Holder of the Disputed Claim has not received prior distributions on account of that Claim) shall be made in accordance with the provisions of the Plan.

The Disputed Claims Reserve shall be closed and extinguished by the Reorganized Debtors when all Distributions and other dispositions of Cash or other property required to be made therefrom under the Plan have been effectuated.

3. Claim Objections.

From and after the Effective Date, the Reorganized Debtors shall have the exclusive right and standing to (i) object to and contest the allowance of all Claims, (ii) compromise and settle any Disputed Claim or Claim that has not otherwise been Allowed, without further order or approval of the Bankruptcy Court; and (iii) litigate to final resolution objections to Claims. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, all Disputed Claims shall be subject to the exclusive jurisdiction of the Bankruptcy Court.

4. Objection Deadline.

All objections to Disputed Claims shall be filed no later than the Claims Objection Bar Date, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, with notice only to those parties set forth on the Post-Effective Date Notice List.

5. Disallowance of Untimely Claims.

Except as provided herein or otherwise agreed by the Debtors or Reorganized Debtors (as applicable), any and all Holders of Claims filed after the applicable Bar Date shall not be treated as Creditors for purposes of voting and distribution pursuant to Bankruptcy Rule 3003(c)(2) unless on or before the Voting Deadline (in the case of voting) or the Confirmation Date (in the case of distributions), such late Proofs of Claim are deemed timely filed by a Final Order of the Bankruptcy Court.

Claims for which Proofs of Claim or requests for allowance were required to be filed by a Bar Date occurring before the Effective Date, and with respect to which no Proof of Claim or request for allowance was filed before the applicable Bar Date, shall be forever disallowed, barred, and discharged in their entirety as of the Effective Date, and shall not be enforceable against the Debtors, the Reorganized Debtors, or the Estates, unless such Proofs of Claim or requests for allowance are deemed timely filed by a Final Order of the Bankruptcy Court before the Effective Date.

Claims for which Proofs of Claim or requests for allowance are required to be filed after the Effective Date pursuant to a Bar Date established by the Plan, and with respect to which no Proof of Claim or request for allowance is filed by the applicable Bar Date, shall be forever disallowed, barred, and discharged in their entirety as of the applicable Bar Date, and shall not be enforceable against the Debtors, the Reorganized Debtors, or the Estates.

6. Allowance of Claims.

Except as expressly provided herein or in any Final Order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim shall be deemed Allowed, unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court enters a Final Order in the Chapter 11 Cases allowing such Claim. Except as expressly provided in the Plan or in any Final Order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), the Reorganized Debtors, on and after the Effective Date, will have and retain any and all rights and defenses the Debtors had with respect to such Claims.

F. Treatment of Executory Contracts

1. Assumption or Rejection of Executory Contracts and Unexpired Leases.

In accordance with sections 365(a) and 1123(b)(2) of the Bankruptcy Code, except as otherwise provided in the Plan or Confirmation Order, all executory contracts and unexpired leases that exist between the Debtors and any Entity shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or unexpired leases (a) that has been assumed or rejected by a Final Order of the Bankruptcy Court entered prior to the Effective Date, (b) as to which a motion for approval of the assumption of such executory contract or unexpired lease has been filed and served prior to the Effective Date, or (c) is listed on the Schedule of Assumed Executory Contracts and Unexpired Leases contained in the Plan Supplement and is not thereafter removed in any amended Plan Supplement filed prior to the Effective Date. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of such rejection under section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such rejection is in the best interests of the Debtors, their Estates, and all parties in interest in the Chapter 11 Cases. Upon the occurrence of the Effective Date, each executory contract or unexpired lease listed on the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement and any amendments thereto filed prior to the Effective Date shall be assumed, or assumed and assigned, as applicable, and shall vest in and be fully enforceable by the Reorganized Debtors or their assignees in accordance with its terms, except as modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing or providing for its assumption or applicable federal law. The Confirmation Order shall constitute an order of the Bankruptcy Court approving any such assumptions pursuant to Sections 365(a) and 1123 of the Bankruptcy Code. With respect to each such executory contract and unexpired lease listed on the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement, the Debtors shall have designated a proposed Cure Claim, and the assumption of such executory contracts and unexpired leases may be conditioned upon the disposition of all issues with respect to such Cure Claim. In addition to any rights afforded the Debtors or Reorganized Debtors (as applicable) in Article VII of the Plan, the Debtors reserve the right to remove any executory contract or unexpired lease

from the Schedule of Assumed Executory Contracts and Unexpired Leases at any time prior to the Effective Date through the filing of an amended Plan Supplement.

2. Claims Based on Rejection of Executory Contracts and Unexpired Leases.

Claims created by the rejection of executory contracts and unexpired leases under the Plan must be filed with the Bankruptcy Court and served on the Reorganized Debtors no later than thirty (30) days after the Effective Date. Any Claims arising from the rejection of an executory contract or unexpired lease under the Plan for which Proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtors, the Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article IX.D of the Plan. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article III of the Plan.

3. Objections to Assumption and Assignment and Proposed Cure Claims.

The Debtors or Reorganized Debtors (as applicable), except as otherwise agreed by the parties, will pay Cure Claims for any and all undisputed defaults under any executory contract or unexpired lease that is assumed or assigned by the Debtors in accordance with, and to the extent required by, Section 365 of the Bankruptcy Code. Proposed Cure Claims with respect to any executory contract or unexpired lease that is assumed and assigned by the Debtors shall be filed with the Plan Supplement, and any amendments thereto will be filed prior to the Effective Date. Any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan (including, for the avoidance of doubt, requests for payment of Cure Claims that differ from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors) must be filed on or before the deadline to object to Plan confirmation. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Confirmation Hearing. Any counterparty to an executory contract or unexpired lease that fails to object timely to the proposed assumption or assignment or Cure Claim will be deemed to have assented to such assumption, assignment, or Cure Claim. In the event there is a dispute as of the Effective Date regarding the amount required to cure defaults under any executory contract or unexpired lease that the Debtors propose to assume or assign, the Debtors or Reorganized Debtors (as applicable) shall have until thirty (30) days after entry of a Final Order determining the amount, if any, of the Debtors' or Reorganized Debtors' (as applicable) liability with respect thereto, or as may otherwise be agreed by the parties, to determine whether to assume, assign or reject the related executory contract or unexpired lease. In the event the Debtors or Reorganized Debtors determine to assume or assign the applicable executory contract or unexpired lease related to the disputed Cure Claim, such disputed Cure Claim shall be paid either within thirty (30) days of the entry of a Final Order determining the amount, if any, of the Debtors' or Reorganized Debtors' (as applicable) liability with respect thereto, or as may otherwise be agreed to by the parties.

4. Limited Extension of Time to Assume or Reject.

In the event of a dispute as to whether a contract is executory or a lease is unexpired is pending before the Court as of the Effective Date, the right of the Debtors or the Reorganized Debtors (as applicable) to move to assume such contract or lease shall be extended until the date that is thirty (30) days after the entry of a Final Order by the Bankruptcy Court determining that the contract is executory or the lease is unexpired. In the event the Debtors or Reorganized Debtors (as applicable) do not timely move to assume such contract or lease, the contract(s) or lease(s) at issue will be deemed rejected pursuant to the Plan. In the event the Reorganized Debtors become aware after the Effective Date of the existence of an Executory Contract or Unexpired Lease, the right of the Reorganized Debtors to move to assume such contract or lease shall be extended until the date that is thirty (30) days after the date on which the Reorganized Debtors

become aware of the existence of such contract or lease. In the event the Debtor or Reorganized Debtors (as applicable) do not timely move to assume such contract or lease, the contract(s) or lease(s) at issue will be deemed rejected pursuant to the Plan. Any cure amount to be paid in connection with a motion to assume filed under Article VII.D of the Plan shall be paid either within thirty (30) days of the entry of a Final Order determining the amount, if any, of the Debtors' or Reorganized Debtors' (as applicable) liability with respect thereto, or as may otherwise be agreed to by the parties.

5. Indemnification and Reimbursement.

Subject to the occurrence of the Effective Date, all Allowed Claims against the Debtors for indemnification, defense, reimbursement, or limitation of liability of current or former directors, officers, or employees of the Debtors against any Claims, costs, liabilities or Causes of Action as provided in the Debtors' articles of organization, certificates of incorporation, bylaws, other organizational documents, or applicable law, shall, to the extent such indemnification, defense, reimbursement, or limitation is owed in connection with one or more events or omissions occurring before the Petition Date, be (a) paid only to the extent of any applicable insurance coverage, and (b) to the extent a Claim is Allowed, treated as Allowed General Unsecured Claims to the extent such Claims are not covered by any applicable insurance, including deductibles. Nothing contained herein shall affect the rights of directors, officers, or employees under any Insurance Policy or coverage with respect to such Claims, costs, liabilities, or Causes of Action or limit the rights of the Debtors, the Estates, or the Reorganized Debtors to object to, seek to subordinate or otherwise contest or challenge Claims or rights asserted by any current or former officer, director or employee of the Debtors.

6. Reservation of Rights.

Notwithstanding anything to the contrary in the Plan other than with respect to disputes over Cure Claims set forth in Article VII.C of the Plan, prior to the Effective Date, the Debtors may amend any decision with respect to the assumption or rejection of any Executory Contract or Unexpired Lease at any time prior to the Effective Date. Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder.

G. Conditions Precedent

1. Conditions Precedent.

The following are conditions precedent to the Effective Date that must be satisfied or waived:

1. There shall be no stay, injunction, or appeal in effect with respect to the Confirmation Order, and the Confirmation Order shall have become a Final Order.

2. The Bankruptcy Court shall have entered the Solicitation Procedures Order in form and substance acceptable to the Debtors.

3. All agreements and instruments that are exhibits to the Plan or Plan Supplement shall be in a form acceptable to the Debtors and have been duly executed and delivered.

4. All other actions, authorizations, consents and regulatory approvals required (if any) and necessary to implement the provisions of the Plan shall have been obtained, effected or executed in a manner acceptable to the Debtors or, if waivable, waived by the Entities entitled to the benefit thereof.

5. The New FM Units shall have been issued and authorized and shall be consistent with the Plan.

2. Waiver.

Notwithstanding the foregoing conditions in Article VIII.A of the Plan, the Debtors reserve, in their sole discretion, the right to waive the occurrence of any condition precedent or to modify any of the foregoing conditions precedent. Any such written waiver of a condition precedent set forth in Article VIII of the Plan may be effected at any time, without notice, without leave or order of the Bankruptcy Court or without any other formal action other than proceeding to consummate the Plan; *provided, however*, that such waiver will be reflected in the notice of occurrence of the Effective Date filed pursuant to Article VIII.E of the Plan. Any actions required to be taken on the Effective Date or Confirmation Date (as applicable) shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action.

3. Effect of Failure of Conditions.

In the event the Effective Date does not occur, upon motion by any party in interest, made before the time that each of the conditions precedent to the Effective Date has been satisfied or waived: (a) the Confirmation Order shall be vacated, (b) no Distributions under the Plan shall be made, (c) the Debtors and all Holders of Claims and Equity Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (d) the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged, and nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Debtors or any other Entity or to prejudice in any manner the rights of the Debtors or any Entity in any further proceedings involving the Debtors unless extended by Bankruptcy Court order. Notwithstanding the foregoing, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived by the Debtors or the Reorganized Debtors (as applicable) before the Bankruptcy Court enters a Final Order granting such motion. If each of the conditions to the Effective Date is not satisfied or duly waived by the Debtors or the Reorganized Debtors (as applicable) on or before the date that is ninety (90) days following the Confirmation Date, the Confirmation Order shall automatically be vacated without further order of the Bankruptcy Court; *provided, however*, that any party in interest may file a motion to extend such date.

4. Substantial Consummation.

"Substantial Consummation" of the Plan, as defined in section 1101(2) of the Bankruptcy Code, shall be deemed to occur on the Effective Date.

5. Notice of Effective Date.

The Debtors shall file with the Bankruptcy Court a notice of occurrence of the Effective Date within a reasonable period of time after the conditions in Article VIII of the Plan have been satisfied or waived pursuant to Article VIII.B of the Plan.

H. Indemnification, Release, Injunctive, and Related Provisions

1. Term of Bankruptcy Injunction and Stay.

Unless otherwise provided in the Plan, the Confirmation Order, or a separate order from the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Cases in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise (excluding any injunctions or stays contained in the Plan or the Confirmation Order), and in existence on the Confirmation Date shall remain in full force and effect until the later of the Effective Date and the date indicated in such applicable order.

2. Discharge of Claims and Termination of Interests.

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument or other agreement or document created pursuant to the Plan, including the agreements and documents contained in the Plan Supplement, the distributions, rights and treatment that are provided in the Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of Claims and Causes of Action of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against liabilities of, liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands, liabilities and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not the Holder of such a Claim has accepted the Plan. Any default or “event of default” by the Debtors with respect to any Claim or Equity Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims subject to the Effective Date occurring.

3. Releases.

Releases by the Debtors and their Estates. Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, and to the fullest extent permitted by applicable law, the adequacy of which is hereby confirmed, for the good and valuable consideration provided by each of the Released Parties, each of the Debtors, the Estates, each of the Debtors’ and the Estates’ current and former affiliates (collectively, the “*Debtor Releasing Parties*”) shall be deemed to have provided a full, complete, unconditional, and irrevocable release to the Released Parties from any and all Causes of Action and any other debts, obligations, rights, suits, judgments, damages, actions, remedies and liabilities whatsoever, whether accrued or unaccrued, whether known or unknown, foreseen or unforeseen, existing on or before the Effective Date, in law, at equity, whether for tort, contract, violations of statutes (including but not limited to the federal or state securities laws), or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, including, without limitation, those that any of the Debtors would have been legally entitled to assert, including those in any way related to the Chapter 11 Cases, the Plan, the Plan Supplement, the Disclosure Statement, and any related agreements, instruments, or documents; *provided, however*, that the foregoing release shall not prohibit the Reorganized Debtors from asserting any and all defenses and counterclaims in respect of any Disputed Claim asserted by any of the Released Parties; *provided further*, that the Released Parties shall not be released from any act or omission that constitutes fraud, willful misconduct, or gross negligence as determined by a Final Order.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in Article IX.C.1 of the Plan do not release (1) any Causes of Action identified in the Schedule of Retained

Causes of Action or (2) any post-Effective Date obligations of any party or Entity: (A) arising under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; or (B) expressly set forth in and preserved by the Plan, the Plan Supplement, or related documents.

Releases by Holders of Claims and Equity Interests. For good and valuable consideration, as of the Effective Date, each of the Releasing Parties (regardless of whether a Releasing Party is a Released Party), shall be deemed to have, to the fullest extent permitted by applicable law, the adequacy of which is hereby confirmed, fully, completely, unconditionally, irrevocably, and forever released the Released Parties of and from any and all Causes of Action, and any other debts, obligations, rights, suits, judgments damages, actions, remedies and liabilities whatsoever, whether accrued or unaccrued, whether known or unknown, foreseen or unforeseen, existing on or before the Effective Date, in law, at equity, whether for tort, contract, violations of statutes (including but not limited to the federal or state securities laws), or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, including those in any way related to the Chapter 11 Cases, the Plan, the Plan Supplement, the Disclosure Statement, and any related agreements, instruments, or documents; *provided, however* that the Released Parties shall not be released from any act or omission that constitutes fraud, willful misconduct, or gross negligence as determined by a Final Order.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in Article IX.C.2 of the Plan do not release any post-Effective Date obligations of any party or Entity arising under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the releases set forth in Article IX.C of the Plan under Bankruptcy Rule 9019 and its finding that they are: (a) in exchange for good and valuable consideration, representing a good faith settlement and compromise of the Claims and Causes of Action released by the Plan; (b) in the best interests of the Debtors and all Holders of Claims and Equity Interests; (c) fair, equitable and reasonable; (d) approved after due notice and opportunity for hearing; and (e) a bar to the assertion of any Claim or Cause of Action thereby released.

The Committee disputes the extent and scope of the proposed releases set forth in Article IX.C of the Plan. The Debtors reserve the right to challenge the Committee's contentions regarding such proposed releases. The Debtors, the Committee, and other key stakeholders will continue to negotiate the extent and scope of such proposed releases in advance of the Confirmation Hearing.

4. Exculpation.

Notwithstanding anything contained in the Plan to the contrary, the Exculpated Parties shall neither have nor incur any liability to any Entity for any act or omission arising after the Petition Date and through the Effective Date in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or consummating the Plan, the Disclosure Statement, or any other contract, instrument, release, other agreement or document created or entered into in connection with the Plan, or any other post-petition act taken or omitted to be taken in connection with the Chapter 11 Cases; *provided, however*, that the foregoing provisions of Article IX.D in the Plan shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted fraud, willful misconduct, or gross negligence.

5. Injunctive Provisions.

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold or may hold Claims or Equity Interests that have been released, discharged or are subject to exculpation pursuant to Article IX of the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and/or the Released Parties:

1. commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests;
2. enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against such Entities on account of or in connection with or with respect to any such Claims or Equity Interests;
3. creating, perfecting or enforcing any lien or encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims or Equity Interests;
4. asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Equity Interests unless such Holder has filed a motion requesting the right to perform such setoff; and
5. commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests released or settled pursuant to the Plan.

Notwithstanding anything to the contrary in the foregoing, the injunction does not enjoin any party under the Plan or under any document, instrument or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to implement the Plan from bringing an action to enforce the terms of the Plan or such document, instrument or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to implement the Plan.

6. Releases of Liens and Cancellation of Documents.

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created under the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against property of the Estates distributed under the Plan shall be fully released and discharged and all of the right, title and interest of any Holder of such mortgages, deeds of trust, Liens, pledges or other security interest shall revert to the Debtors.

In addition, on the Effective Date, except to the extent otherwise provided in the Plan, any and all notes, instruments, debentures, certificates, and other documents evidencing Claims against the Debtors shall be deemed inoperative and unenforceable solely as against the Debtors and their Estates.

Nothing contained in the Plan shall revive, preserve, or transfer any Claims or Liens that have been released pursuant to any prior order of the Bankruptcy Court.

**ARTICLE V.
CONFIRMATION OF THE PLAN**

A. Solicitation and Voting Procedures

On December 1, 2020, the Bankruptcy Court entered the Solicitation Procedures Order (Dkt. No. 282). For purposes of this Article V, capitalized terms used but not defined herein or in the Plan or Plan Supplement shall have the meaning ascribed to such terms in the Solicitation Procedures Order. **The Solicitation Procedures Order is incorporated herein by reference and should be read in conjunction with this Disclosure Statement and in formulating a decision to vote to accept or reject the Plan.**

THIS DISCUSSION OF THE SOLICITATION AND VOTING PROCEDURES SET FORTH IN THIS DISCLOSURE STATEMENT IS ONLY A SUMMARY. PLEASE REFER TO THE SOLICITATION PROCEDURES ORDER (Dkt. No. 282) FOR A MORE COMPREHENSIVE DESCRIPTION OF THE SOLICITATION AND VOTING PROCESS.

1. Solicitation Packages

Pursuant to the Solicitation Procedures Order, Holders of Claims who are eligible to vote to accept or reject the Plan will receive appropriate solicitation materials (the “General Solicitation Package”), including:

- a copy of the Solicitation Procedures Order (without exhibits);
- the Confirmation Hearing Notice;
- a cover letter, describing the contents of the General Solicitation Package and urging the Holders of Claims in each of the Voting Classes (defined below) to vote to accept the Plan;
- an appropriate form of Ballot or opt-out form for Holders of Claims or Equity Interests;
- the approved Disclosure Statement (with all exhibits attached hereto, including the Plan and the exhibits attached thereto); and
- any supplemental documents the Debtors file with the Bankruptcy Court and any documents that the Bankruptcy Court orders to be made available.

The General Solicitation Package will provide the Disclosure Statement and Plan in electronic format and all other contents of the General Solicitation Package, including Ballots, in paper format. Any Holder of a Claim or Equity Interest may obtain, at no charge, a paper copy of the documents otherwise provided by (a) accessing Solicitation Agent’s website at <https://www.donlinrecano.com/Clients/fm/Index>, (b) writing to the Solicitation Agent, via first-class or overnight mail, at Donlin, Recano & Company, Inc., Re: FM Coal Ballot Processing, P.O. Box 199043, Blythebourne Station, Brooklyn, NY 11219, (c) calling the Solicitation Agent at (866) 627-2494 (US toll-free), or (d) e-mailing fminfo@donlinrecano.com.

2. Voting Rights

(i) Classes Entitled to Vote

Under the provisions of the Bankruptcy Code, not all holders of claims against, or equity interests in, a debtor are entitled to vote on a chapter 11 plan. The following Classes (the “Voting Classes”) in the

table below are the only Classes entitled to vote to accept or reject the Plan. The Claims in the Voting Classes are Impaired under the Plan and the Holders of such Claims may, in certain circumstances and to the extent Allowed, receive a distribution under the Plan. Accordingly, Holders of Allowed Claims in the Voting Classes have the right to vote to accept or reject the Plan. If your Claim or Equity Interest is not included in one of these Voting Classes, you are not entitled to vote and you will not receive a General Solicitation Package. Each of the Voting Classes will have accepted the Plan if: (1) the Holders of at least two-thirds in dollar amount of the Allowed Claims actually voting in each Class have voted to accept the Plan; and (2) the Holders of more than one half in number of the Allowed Claims actually voting in each Class have voted to accept the Plan. Additionally, if the Solicitation Agent receives no votes to accept or reject the Plan with respect to any particular Class of Claims, that Class will be deemed to have voted to accept the Plan.

For a discussion of the procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, see the Solicitation Procedures Order, attached to this Disclosure Statement as Exhibit B.

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Rights</u>
3	Credit Agreement Secured Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote

(ii) Classes Not Entitled to Vote

Under the Bankruptcy Code, Holders of Claims or Equity Interests are not entitled to vote if such Claims or Interests are unimpaired under the Plan or if they will receive no distribution of property under the Plan. Based on this standard, the following Classes of Claims and Equity Interests are not entitled to vote on the Plan and the Holders of such Claims and Equity Interests will *not* be solicited to vote on the Plan.

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Rights</u>
1	Other Secured Claims	Unimpaired	Deemed to Accept
2	Other Priority Claims	Unimpaired	Deemed to Accept
5	Intercompany Claims	Impaired	Deemed to Reject
6	Intercompany Equity Interests	Unimpaired	Deemed to Accept
7	FM Equity Interests	Impaired	Deemed to Reject

Additionally, the Solicitation Procedures Order provides that certain Holders of Claims in the Voting Classes, such as those Holders whose Claims have been disallowed or are subject to a pending objection, are not entitled to vote to accept or reject the Plan.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

The deadline for the Debtors to file a motion under Bankruptcy Rule 3018(a) to temporarily allow a Claim or Equity Interest in a certain amount for voting purposes (a “3018 Motion”) is January 11, 2021 at 4:00 p.m. (prevailing Central Time). The deadline for Holders of Claims or Equity Interests to respond to a 3018 Motion filed by the Debtors is January 19, 2021 at 4:00 p.m. (prevailing Central Time). The

deadline for Holders of Claims or Equity Interests to file a 3018 Motion seeking an order temporarily allowing such Claims or Equity Interests in a different amount or classification for purposes of voting to accept or reject the Plan is January 11, 2021 at 4:00 p.m. (prevailing Central Time). The deadline for the Debtors to respond to a 3018 Motion filed by a Holder of a Claim or Equity Interest is January 19, 2021 at 4:00 p.m. (prevailing Central Time).

3. Voting Procedures

More detailed instructions regarding the procedures for voting on the Plan are contained on the Ballots distributed to Holders of Claims that are entitled to vote to accept or reject the Plan. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions.

Each Holder of a Claim entitled to vote to accept or reject the Plan may cast only one Ballot for each Claim held by such Holder. By signing and returning a Ballot, each Holder of a Claim entitled to vote will certify to the Bankruptcy Court and the Debtors that no other Ballots with respect to such Claim have been cast or, if any other Ballots have been cast with respect to such Claim, such earlier Ballots are superseded and revoked.

As set forth in Article IX(B)(2) of the Plan, each Holder of a Claim will have an option on the Ballot or notice of non-voting status, as applicable, to “opt out” of the releases of the Released Parties provided in Article IX(B)(2) of the Plan, indicating that such Holder does not consent to the releases of the Released Parties on the terms set forth in the Plan.

(i) The Voting Record Date

The Voting Record Date is November 30, 2020. The Solicitation Procedures Order established the Voting Record Date for purposes of determining, among other things, which Holders of Claims are eligible to vote on the Plan and whether Claims have been properly assigned or transferred under Bankruptcy Rule 3001(e) such that an assignee can vote as the Holder of a Claim.

(ii) The Voting Deadline

The Voting Deadline is January 5, 2021 at 5:00 p.m. (prevailing Central Time). The Solicitation Procedures Order also established the Voting Deadline as the deadline for submitting Ballots. To have votes to accept or reject the Plan counted, every registered Holder of a Claim must properly execute, complete, and deliver the Ballot by (i) first-class mail, (ii) overnight courier, (iii) personal delivery, or (iv) via electronic mail, as described below, in each case so that the Solicitation Agent **actually receives** the Ballot no later than the Voting Deadline. Delivery of a Ballot to the Solicitation Agent by facsimile will render the corresponding vote invalid. It is important to follow the specific instructions provided on each Ballot. Except as provided in the Solicitation Procedures Order or your relevant Ballot, Ballots should be sent to:

By first-class mail, overnight courier, or hand delivery:

**FM Coal Ballot Processing, c/o Donlin, Recano & Company, Inc.
P.O. Box 199043
Blythebourne Station
Brooklyn, NY 11219**

By electronic mail:

DRCVote@donlinrecano.com

Ballots submitted by facsimile other than as set forth therein will not be counted.

(iii) Elimination of Vacant Classes

Any Class of Claims or Equity Interests that does not have a holder of an Allowed Claim or Allowed Equity Interest, or a Claim or Equity Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing, shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

(iv) Presumed Acceptance by Voting Classes That Do Not Vote

If a Class contains Claims or Equity Interests eligible to vote on the Plan and no holder of Claims or Equity Interests in such Class eligible to vote on the Plan votes to accept or reject the Plan, the Plan shall be presumed accepted by the Holders of such Claims or Equity Interests in such Class.

(v) Ballots Not Counted

Except as otherwise provided by the Solicitation Procedures Order, no Ballot will be counted toward confirmation if, among other things: (i) it is illegible or contains insufficient information to permit the identification of the Holder of the Claim; (ii) it was transmitted by facsimile; (iii) it was cast by an entity that is not entitled to vote on the Plan; (iv) it was cast for a Claim listed in the Schedules as contingent, unliquidated, or disputed for which the applicable bar date has passed and no proof of claim was timely filed; (v) it was cast for a Claim that is subject to an objection pending as of the Voting Record Date (unless temporarily allowed in accordance with the Solicitation Procedures Order); (vi) it was sent to the Debtors, the Debtors' agents (other than the Solicitation Agent), the Debtors' financial or legal advisors, the Committee, or the Committee's financial or legal advisors; (vii) it is unsigned, except with respect to Ballots submitted electronically, in accordance with the procedures set forth in the Solicitation Procedures Order; (viii) it is not clearly marked to either accept or reject the Plan or it is marked both to accept and reject the Plan; or (ix) it is not received by the Solicitation Agent before the Voting Deadline.

IF YOU HAVE ANY QUESTIONS ABOUT THE SOLICITATION OR VOTING PROCESS, PLEASE CONTACT THE SOLICITATION AGENT AT:

(866) 627-2494 (US TOLL-FREE) OR EMAIL AT FMINFO@DONLINRECANO.COM. ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE OR OTHERWISE NOT IN COMPLIANCE WITH THE SOLICITATION PROCEDURES ORDER WILL NOT BE COUNTED.

4. Nonconsensual Confirmation

If any impaired Class of Claims entitled to vote does not accept the Plan by the requisite statutory majority provided in section 1126 of the Bankruptcy Code, the Debtors reserve the right to amend the Plan, or to undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, or both. With respect to impaired Classes that are deemed to reject the Plan, the Debtors intend to

request that the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code notwithstanding the deemed rejection of the Plan by those classes.

B. Plan Confirmation Objection Deadline

The Bankruptcy Court has established January 5, 2021 at 4:00 p.m., prevailing Central Time, as the deadline to object to confirmation of the Plan (the “Objection Deadline”). All such objections must be filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest, in accordance with the Solicitation Procedures Order, so that they are *actually received* on or before the Objection Deadline. The Debtors believe that the Objection Deadline, as established by the Bankruptcy Court, affords the Bankruptcy Court, the Debtors, and other parties in interest reasonable time to consider the objections to the Plan before the Confirmation Hearing.

Any objection to the Plan must: (1) be in writing; (2) conform to the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware, and any orders of the Bankruptcy Court; (3) state, with particularity, the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (4) be filed with the Bankruptcy Court (contemporaneously with a proof of service) and served upon the following parties so as to be *actually received* on or before the Objection Deadline. **Unless an objection to the Plan is timely served and filed, it may not be considered by the Bankruptcy Court.**

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C. Confirmation

The following is a brief summary of the confirmation process with respect to the Plan. Holders of Claims or Equity Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult their own advisors with respect to the summary provided in this Disclosure Statement.

1. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires a bankruptcy court, after notice, to conduct a hearing to consider confirmation of a chapter 11 plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. **The Bankruptcy Court has scheduled the Confirmation Hearing for January 25, 2021 at 10:00 a.m. prevailing Central Time**, before the Honorable Tamara O. Mitchell, United States Bankruptcy Judge. The Confirmation Hearing will be held telephonically. Parties wishing to attend the telephonic Confirmation Hearing may do so by dialing (877) 366-1280 and entering access code 2653346#.

The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court or the Debtors without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or the filing of a notice of such adjournment served in accordance with the Solicitation Procedures Order.

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are satisfied. Among the requirements for confirmation of a plan are that the plan is (i) accepted by all impaired classes of claims and equity interests or, if rejected by an impaired class, that the plan “does not discriminate unfairly” and is “fair and equitable” as to such class; (ii) feasible; and (iii) in the “best interests” of creditors and stockholders that are impaired under the plan.

2. Acceptance

Acceptance of a plan need only be solicited from holders of claims or interests whose claims or interests belong to a class that is impaired and not deemed to have rejected the plan. A class that is not impaired under a plan is presumed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. Pursuant to section 1124 of the Bankruptcy Code, a class is impaired unless the plan: (1) leaves unaltered the legal, equitable, and contractual rights to which the claim or the equity interest entitles the holder of such claim or equity interest; (2) cures any default, reinstates the original terms of such obligation, and compensates the applicable party in question; or (3) provides that, on the consummation date, the holder of such claim or equity interest receives cash equal to the allowed amount of that claim or, with respect to any equity interest, any fixed liquidation preference to which the holder of such equity interest is entitled to or any fixed price at which the debtor may redeem the security. For a discussion on voting and voting procedures, see Sections Article I.A and Article I.B herein entitled “Holders of Claims Entitled to Vote” and “Voting Procedures,” respectively.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired creditors as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of allowed claims in that class. Only those holders that actually vote to accept or to reject such plan are counted for purposes of determining whether these dollar and number thresholds are met. Section 1126(d) of the Bankruptcy Code similarly defines acceptance of a plan by a class of impaired interests. Thus, a class of claims or interests will have voted to accept the plan only if holders of two-thirds in dollar amount and more than one-half in number of allowed claims or interests, as applicable, in that class that actually vote cast their ballots in favor of acceptance of the plan.

If any impaired Class of Claims or Equity Interests entitled to vote does not accept the Plan by the requisite statutory majority provided in sections 1126(c) and (d) of the Bankruptcy Code, the Debtors reserve the right to amend the Plan in accordance with section 1127 of the Bankruptcy Code or to seek Bankruptcy Court confirmation of the Plan under section 1129(b) of the Bankruptcy Code (a procedure known as “cram down”), or both. The determination as to whether to seek confirmation of the Plan under such circumstances will be announced before or at the Confirmation Hearing. With respect to Impaired Classes of Claims or Equity Interests that are deemed to reject the Plan, the Debtors will request that the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code.

Article III.J of the Plan provides in full: “If a Class contains Claims eligible to vote on the Plan and no holder of a Claim in such Class eligible to vote on the Plan votes to accept or reject the Plan, the Plan shall be presumed accepted by the Class.” Such “deemed acceptance” by an Impaired Class in which no Class members submit Ballots satisfies section 1129(a)(10) of the Bankruptcy Code.

3. Confirmation Standards

(i) Overview

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code with respect to the Debtors. The Debtors believe that the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code and that they have complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code. Specifically, the Debtors believe that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code, including those set forth below.

- the Plan complies with the applicable provisions of the Bankruptcy Code;
- the Debtors have complied with the applicable provisions of the Bankruptcy Code;
- the Plan has been proposed in good faith and not by any means forbidden by law;
- any payment made or to be made under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been or will be disclosed to the Bankruptcy Court, and any such payment: (1) made before the confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after confirmation of the Plan;
- with respect to each Class of Claims, each holder of an impaired Allowed Claim has accepted the Plan or will receive or retain under the Plan on account of such Allowed Claim property of a value as of the Effective Date of the Plan that is not less than the amount that such holder would receive or retain if the Debtors were liquidated on that date under

chapter 7 of the Bankruptcy Code. With respect to each Class of Equity Interests, each holder of an impaired Allowed Equity Interest has accepted the Plan or will receive or retain under the Plan on account of such Allowed Equity Interest property of a value as of the Effective Date of the Plan that is not less than the amount that such holder would receive or retain if the Debtors were liquidated on that date under chapter 7 of the Bankruptcy Code;

- each Class of Claims or Equity Interests that is entitled to vote on the Plan has either accepted the Plan or the Plan can be confirmed without the approval of such voting Class of Claims or Equity Interests pursuant to section 1129(b) of the Bankruptcy Code;
- except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the Plan provides that Allowed Administrative Claims and Other Priority Claims (other than priority tax claims) will be paid in full on the Effective Date (except that if a class of priority claims has voted to accept the plan, holders of such claims may receive deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amounts of such claims) and that holders of Priority Tax Claims may receive on account of such claims deferred cash payments, over a period not exceeding six years after the date of assessment of such claims, of a value, as of the effective date, equal to the allowed amount of such claims;
- at least one Class of Impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by any “insider,” as that term is defined by section 101(31) of the Bankruptcy Code, holding a Claim or Interest in that Class;
- confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors or any successors thereto under the Plan, unless the Plan contemplates such liquidation or reorganization; and
- the Debtors have paid or the Plan provides for the payment of the required filing fees pursuant to 28 U.S.C. § 1930 to the clerk of the Bankruptcy Court.

(ii) Best Interests of Creditors Test—Liquidation Analysis

The “best interests” standard requires that the Bankruptcy Court find either:

- that all members of each Impaired Class have accepted the Plan; or
- that each holder of an allowed Claim or Equity Interest of each Impaired Class of Claims will receive or retain on account of such Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

The first step in ascertaining whether the Debtors meet this standard is to determine the dollar amount that would be generated from the liquidation of the Debtors’ assets and properties in a chapter 7 liquidation case. The gross amount of cash available in such a liquidation would be the sum of the proceeds from the disposition of the Debtors’ assets and the cash held by the Debtors at the time of the commencement of the chapter 7 case. This gross amount would be reduced by the amount of any Allowed Claims secured by such assets, the costs and expenses of the liquidation, and such additional administrative expenses and priority claims that may result from the liquidation of the Debtors’ business and the use of

chapter 7 for the purposes of liquidation. Any remaining net cash would be allocated to creditors and shareholders in strict accordance with the order of priority of claims contained in section 726 of the Bankruptcy Code. As discussed in the Debtors' Liquidation Analysis attached to this Disclosure Statement as **Exhibit C**, the Debtors have determined that confirmation of the Plan will provide each creditor and interest holder with a recovery that is not less than it would receive pursuant to a liquidation of the Debtors under chapter 7 of the Bankruptcy Code. See **Exhibit C** for a further discussion of how the Plan satisfies the "best interests" test.

(iii) Financial Feasibility

Pursuant to section 1129(a)(11) of the Bankruptcy Code, among other things, the Bankruptcy Court must determine that confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Debtors or any successors to the Debtors under the Plan. This condition is often referred to as the "feasibility" of the Plan. The Debtors believe that the Plan satisfies this requirement.

For purposes of determining whether the Plan meets this requirement, the Debtors' financial advisors prepared a projected financial forecast. This financial forecast, and the assumptions on which they are based, are annexed hereto as **Exhibit D** (the "**Financial Projections**") and reflects, among other things, the Reorganized Debtors' improved cash flow and financial performance. Based upon the Financial Projections, the Debtors believe that the Reorganized Debtors will be able to make all payments required pursuant to the Plan, and therefore, that confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization. The Debtors also believe that they will be able to repay or refinance on commercially reasonable terms any and all of the indebtedness under the Plan at or before the maturity of such indebtedness.

The Financial Projections should be read in conjunction with the assumptions, qualifications, and explanations set forth in this Disclosure Statement and in the Plan in their entirety. The Debtors prepared the Financial Projections based upon, among other things, the anticipated future financial condition and results of operations of the Reorganized Debtors. The Debtors do not, as a matter of course, publish their business plans, strategies, projections, or their anticipated results of operations or financial condition. Accordingly, the Reorganized Debtors do not intend to update or otherwise revise the Financial Projections or make such information public to reflect events or circumstances existing or arising after the date of this Disclosure Statement or to reflect the occurrence of unanticipated events, even in the event that any or all of the underlying assumptions are shown to be in error.

THE FINANCIAL PROJECTIONS WERE NOT PREPARED TO COMPLY WITH THE GUIDELINES FOR PROSPECTIVE FINANCIAL STATEMENTS PUBLISHED BY THE FINANCIAL ACCOUNTING STANDARDS BOARD. THE DEBTORS' INDEPENDENT ACCOUNTANTS HAVE NEITHER EXAMINED NOR COMPILED THE ACCOMPANYING FINANCIAL PROJECTIONS AND ACCORDINGLY DO NOT EXPRESS AN OPINION OR ANY OTHER FORM OF ASSURANCE WITH RESPECT TO THE FINANCIAL PROJECTIONS, ASSUME NO RESPONSIBILITY FOR THE FINANCIAL PROJECTIONS AND DISCLAIM ANY ASSOCIATION WITH THE FINANCIAL PROJECTIONS. EXCEPT AS MAY OTHERWISE BE PROVIDED IN THE PLAN OR THIS DISCLOSURE STATEMENT, THE DEBTORS DO NOT INTEND TO UPDATE OR OTHERWISE REVISE THESE FINANCIAL PROJECTIONS TO REFLECT EVENTS OR CIRCUMSTANCES EXISTING OR ARISING AFTER THE DATE OF THIS DISCLOSURE STATEMENT OR TO REFLECT THE OCCURRENCE OF UNANTICIPATED EVENTS.

THE FINANCIAL PROJECTIONS, WHILE PRESENTED WITH NUMERICAL SPECIFICITY, ARE NECESSARILY BASED ON A VARIETY OF ESTIMATES AND ASSUMPTIONS THAT,

THOUGH CONSIDERED REASONABLE BY THE DEBTORS, MAY NOT BE REALIZED, AND ARE INHERENTLY SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC, COMPETITIVE, INDUSTRY, REGULATORY, MARKET AND FINANCIAL UNCERTAINTIES AND CONTINGENCIES, MANY OF WHICH WILL BE BEYOND THE COMPANY'S AND THE REORGANIZED DEBTORS' CONTROL. THE DEBTORS CAUTION THAT NO REPRESENTATIONS CAN BE OR ARE MADE AS TO THE ACCURACY OF THE FINANCIAL PROJECTIONS OR TO THE REORGANIZED DEBTORS' ABILITY TO ACHIEVE THE PROJECTED RESULTS. SOME ASSUMPTIONS INEVITABLY WILL BE INCORRECT. MOREOVER, EVENTS AND CIRCUMSTANCES OCCURRING SUBSEQUENT TO THE DATE ON WHICH THE PROJECTIONS WERE PREPARED MAY BE DIFFERENT FROM THOSE ASSUMED, OR, ALTERNATIVELY, MAY HAVE BEEN UNANTICIPATED, AND THUS MAY AFFECT FINANCIAL RESULTS IN A MATERIAL AND POSSIBLY ADVERSE MANNER. THE FINANCIAL PROJECTIONS, THEREFORE, MAY NOT BE RELIED UPON AS A GUARANTEE OR OTHER ASSURANCE OF THE ACTUAL RESULTS THAT WILL OCCUR. SEE SECTION VI OF THIS DISCLOSURE STATEMENT (CERTAIN RISK FACTORS TO BE CONSIDERED). IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, HOLDERS OF CLAIMS MUST MAKE THEIR OWN DETERMINATIONS AS TO THE REASONABLENESS OF SUCH ASSUMPTIONS AND THE RELIABILITY OF THE FINANCIAL PROJECTIONS AND SHOULD CONSULT WITH THEIR OWN ADVISORS.

4. Cram Down

The Debtors intend to seek to cram down the Plan on any Class of Claims in impaired Classes that vote against or are deemed to reject the Plan.

The Bankruptcy Code contains provisions for confirmation of a plan even if the plan is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted the plan (determined without including any acceptance of the plan by any insider). The “cram down” provisions of the Bankruptcy Code are set forth in section 1129(b) of the Bankruptcy Code.

Under the “cram down” provisions, on the request of a plan proponent, the bankruptcy court will confirm a plan despite the lack of acceptance by an impaired class or classes if the bankruptcy court finds that:

- the plan does not discriminate unfairly with respect to each non-accepting impaired class;
- the plan is fair and equitable with respect to each non-accepting impaired class; and
- at least one impaired class has accepted the plan (determined without including any acceptance of the plan by any insider).

These standards ensure that holders of junior interests, such as common stockholders, cannot retain any interest in the debtor under a plan of reorganization that has been rejected by a senior impaired class of claims or interests unless the claims or interests in that senior impaired class are paid in full.

As used by the Bankruptcy Code, the phrases “discriminate unfairly” and “fair and equitable” have narrow and specific meanings unique to bankruptcy law. A plan does not discriminate unfairly if claims or interests in different classes but with similar priorities and characteristics receive or retain property of similar value under a plan. By establishing separate Classes for the holders of each type of Claim or Equity Interest and by treating each holder of a Claim or Equity Interest in each Class similarly, the Plan has been structured in order to satisfy the “unfair discrimination” test of section 1129(b) of the Bankruptcy Code.

The Bankruptcy Code sets forth different standards for establishing that a plan is “fair and equitable” with respect to a dissenting class, depending on whether the class is comprised of secured claims, unsecured claims or equity interests. In general, section 1129(b) of the Bankruptcy Code permits confirmation of a plan despite non-acceptance by an impaired class if that class and all junior classes are treated in accordance with the “absolute priority” rule. This rule requires that the dissenting class be paid in full before a junior class may receive anything under the plan. The Bankruptcy Code establishes “cram down” tests for secured creditors, unsecured creditors and equity holders as follows:

- Secured Creditors. Either: (1) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim; (2) each impaired secured creditor realizes the “indubitable equivalent” of its allowed secured claim; or (3) the property securing the claim is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds to be as described in clauses (1) and (2) above.
- Unsecured Creditors. Either: (1) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim; or (2) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.
- Equity Interests. Either: (1) each holder of an equity interest will receive or retain under the plan property of a value equal to the greater of the fixed liquidation preference to which such holder is entitled, or the fixed redemption price to which such holder is entitled or the value of the interest; or (2) the holder of an interest that is junior to the nonaccepting class will not receive or retain any property under the plan.

In addition, the Bankruptcy Code requires that a debtor demonstrate that no class senior to a non-accepting impaired class will receive more than payment in full on its claims.

If all of the applicable requirements for confirmation of the Plan are satisfied as set forth in section 1129(a)(1) through (13) of the Bankruptcy Code, except that one or more Classes of Impaired Claims have failed to accept the Plan under section 1129(a)(8) of the Bankruptcy Code, the Debtors will request that the Bankruptcy Court confirm the Plan under the “cram down” procedures in accordance with section 1129(b) of the Bankruptcy Code. The Debtors believe that the Plan satisfies the “cram down” requirements of the Bankruptcy Code, but there can be no assurance that the Bankruptcy Court will determine that the Plan meets the requirements of section 1129(b) of the Bankruptcy Code or that at least one Impaired Class of Claims will vote to accept the Plan, without including any acceptance by an insider, as required for confirmation of a plan under the “cram down” procedures.

D. Consummation

The Plan will become effective and be consummated on the Effective Date. As used in this Disclosure Statement, the “Effective Date” means a Business Day selected by the Debtors that is on or after the date by which all conditions precedent specified in Article VIII of the Plan have been satisfied or waived. Within five (5) Business Days of the Effective Date, notice of the Effective Date shall be filed in the Bankruptcy Court.

From and after the occurrence of the Effective Date, the Plan will be implemented pursuant to its terms, consistent with the provisions of the Bankruptcy Code.

ARTICLE VI. RISK FACTORS

Before voting to accept or reject the Plan, Holders of Claims against the Debtors should read and consider carefully the following risk factors and the other information in this Disclosure Statement, the Plan, and the other documents delivered with or incorporated by reference in this Disclosure Statement and the Plan. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan, its implementation, or the Debtors' businesses and operations following the Effective Date.

A. Bankruptcy Law Considerations and Other Legal Risks

The occurrence or non-occurrence of any or all of the following contingencies, and any others, could affect distributions available to Holders of Allowed Claims under the Plan but will not necessarily affect the validity of the vote of the Impaired Classes to accept or reject the Plan or necessarily require a re-solicitation of the votes of holders of Claims or Interests in such Impaired Classes. If the Plan is not consummated, any settlement, compromise, or release embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), the assumption or rejection of executory contracts or unexpired leases affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be null and void.

1. Parties in Interest May Object to the Plan's Classification of Claims and Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims in such class. The Debtors believe that the classification of the Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Equity Interests, each encompassing Claims and Equity Interests that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

2. The Conditions Precedent to the Effective Date of the Plan May Not Occur

As more fully set forth in Article VIII of the Plan, the Effective Date is subject to a number of conditions precedent. If such conditions precedent are not met or waived, the Effective Date will not take place.

3. The Debtors May Fail to Satisfy Vote Requirements

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, confirmation of the Plan. In the event that sufficient votes are not received, the Debtors may seek to confirm an alternative chapter 11 plan. There can be no assurance that the terms of any such alternative chapter 11 plan would be similar or as favorable to the holders of Allowed Claims as those proposed in the Plan.

4. The Debtors May Not Be Able to Secure Confirmation of the Plan

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, a finding by the Bankruptcy Court that: (a) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or a need for further financial

reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to non-accepting holders of claims and equity interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtors were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting holder of an Allowed Claim or Allowed Interest might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that this Disclosure Statement, the balloting procedures, and voting results are appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for confirmation are not met. If a chapter 11 plan of reorganization is not confirmed by the Bankruptcy Court, it is unclear whether the Debtors will be able to reorganize their business and what, if anything, Holders of Allowed Claims against them would ultimately receive on account of such Allowed Claims.

The effectiveness of the Plan is also subject to certain conditions as described in Article VIII of the Plan. If the Plan does not become effective, it is unclear what distributions, if any, Holders of Allowed Claims will receive on account of such Allowed Claims.

The Debtors, subject to the terms and conditions of the Plan, reserve the right to modify the terms and conditions of the Plan as necessary for confirmation. Any such modifications could result in less favorable treatment of any non-accepting Class, as well as any Class junior to such non-accepting Class, than the treatment currently provided in the Plan. Such less favorable treatment could include a distribution of property with a lesser value than currently provided in the Plan or no distribution whatsoever under the Plan. Changes to the Plan may also delay the confirmation of the Plan and the liquidation of the Debtors' estates.

5. Nonconsensual Confirmation

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm a plan at the proponents' request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and, as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes. The Debtors believe that the Plan satisfies these requirements, and the Debtors may request such nonconsensual confirmation in accordance with subsection 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion. In addition, the pursuit of nonconsensual confirmation of the Plan may result in, among other things, increased expenses and the expiration of any commitment to provide support for the Plan, financially or otherwise.

6. The Chapter 11 Cases May Be Converted to Cases Under Chapter 7 of the Bankruptcy Code

If the Bankruptcy Court finds that it would be in the best interest of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtors believe that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided for in a chapter 11 plan because of, among other things, (a) additional

administrative expenses involved in the appointment of a chapter 7 trustee, and (b) additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation.

7. The Debtors and Reorganized Debtors May Object to the Amount or Classification of a Claim or Interest

Except as otherwise provided in the Plan, the Debtors and Reorganized Debtors (as applicable) reserve the right to object to the amount or classification of any Claim under the Plan. The estimates set forth in this Disclosure Statement cannot be relied upon by any holder of a Claim where such Claim is subject to an objection. Any holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement.

8. Risk of Non-Occurrence of the Effective Date

The Debtors can provide no assurance as to the timing or as to whether the Effective Date will, in fact, occur. The occurrence of the Effective Date is subject to certain conditions precedent as described in Article VIII of the Plan, including, among others, those relating to consummation of the Plan, as well as the receipt of any necessary regulatory approvals. Failure to meet any of these conditions could result in the Plan not being consummated or the Confirmation Order being vacated.

9. Contingencies Could Affect Votes of Impaired Classes to Accept or Reject the Plan

The distributions available to holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including, without limitation, whether the Bankruptcy Court orders certain Allowed Claims and Allowed Interests to be subordinated to other Allowed Claims and Allowed Interests. The occurrence of any and all such contingencies, which could affect distributions available to holders of Allowed Claims and Allowed Interests under the Plan, will not affect the validity of the vote taken by the Impaired Classes to accept or reject the Plan or require any sort of revote by the Impaired Classes.

10. The Actual Amount of Allowed Claims May Differ From the Estimated Claims and Adversely Affect the Percentage Recovery of Claims

The estimated Claims and creditor recoveries that are set forth in this Disclosure Statement are based on various assumptions, and the actual Allowed amounts of Claims may significantly differ from the estimates. Should one or more of the underlying assumptions ultimately prove to be incorrect, the actual Allowed amounts of Claims may vary from the estimated amounts contained in this Disclosure Statement. Moreover, the Debtors cannot determine with any certainty at this time, the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the percentage recoveries to holders of Allowed Claims under the Plan.

11. Releases, Injunctions, and Exculpations Provisions May Not Be Approved

Article IX of the Plan provides for certain releases, injunctions, and exculpations, including a release of liens and third-party releases that may otherwise be asserted against certain parties, as applicable. The releases, injunctions, and exculpations (including, for the avoidance of doubt, the definitions of capitalized terms) provided in the Plan are subject to objection by parties in interest and may not be approved. If the releases are not approved, certain parties, as more fully described in the Plan, may withdraw their support for the Plan.

12. Certain Tax Implications of the Chapter 11 Cases

Holders of Claims and Equity Interests should carefully review Article VII hereof to determine how the tax implications of the Plan and the Chapter 11 Cases may adversely affect the Debtors and certain Holders of Claims and Equity Interests. The tax consequences of the Plan are very complicated.

13. Confirmation and Consummation May Be Delayed if the Debtors Have to Resolicit

If the Debtors resolicit acceptances of the Plan from the parties entitled to vote thereon, the confirmation of the Plan could be delayed and possibly jeopardized. Non-confirmation of the Plan could result in an extended chapter 11 proceeding, during which time the Debtors could experience material administrative costs, including professional fees, which could hinder further attempts to liquidate through chapter 11.

B. Risks Relating to the Debtors' Business

The Debtors' business is subject to general risks and uncertainties that could materially adversely affect the Debtors' business, financial condition, results of operations or stock price. Additional risks and uncertainties not currently known to the Debtors or that they may deem immaterial may also materially adversely affect their business, financial condition, results of operations or stock price.

1. The Debtors' businesses may suffer as a result of a substantial or extended decline in pricing, demand and other factors beyond the Debtors' control, which could negatively affect the Debtors' operating results and cash flows.

The Debtors' businesses are cyclical and have experienced significant difficulties in the past. The Debtors' financial performance depends, in large part, on varying conditions in the international and domestic markets that they serve, which fluctuate in response to various factors beyond the Debtors' control. The prices at which the Debtors sell their coal is largely dependent on prevailing market prices. The Debtors have experienced significant price fluctuations in their coal business, and they expect that such fluctuations will continue. Demand for, and therefore the price of, coal is driven by a variety of factors, including, without limitation, to the following:

- the domestic and foreign supply and demand for coal;
- the quantity and quality of coal available from competitors;
- adverse weather, climatic and other natural conditions, including natural disasters;
- domestic and foreign economic conditions, including economic slowdowns;
- global and regional political events;
- legislative, regulatory and judicial developments, environmental regulatory changes and changes in energy policy and energy conservation measures that could adversely affect the coal industry, such as legislation limiting carbon emissions or providing for increased funding and incentives for the use of alternative energy sources;
- capacity, reliability, availability and cost of transportation and port facilities, and the proximity of available coal to such transportation and port facilities; and

- market price fluctuations for emission allowances.

In addition, reductions in the demand for metallurgical coal caused by reduced steel production by the Debtors' customers, increases in the use of substitutes for steel (such as aluminum, composites or plastics) and the use of steel-making technologies that use less or no metallurgical coal can significantly affect the Debtors' financial results and impede growth.

2. The failure of the Debtors' customers to honor or renew contracts could adversely affect the Debtors' business.

A significant portion of the sales of the Debtors' coal is to long-term customers. The success of the Debtors' businesses depends on their ability to retain the Debtors' current customers, renew the Debtors' existing customer contracts and solicit new customers. The Debtors' ability to do so generally depends on a variety of factors, including the quality and price of the Debtors' products, the Debtors' ability to market these products effectively, the Debtors' ability to deliver on a timely basis and the level of competition that they face. If current customers do not honor current contract commitments, or if they terminate agreements or exercise *force majeure* provisions allowing for the temporary suspension of performance, the Debtors' revenues will be adversely affected. If the Debtors are unsuccessful in renewing contracts with their long-term customers and they discontinue purchasing coal from the Debtors or renew contracts on terms less favorable than in the past, or if the Debtors are unable to sell their coal to new customers on terms favorable to them, the Debtors' revenues could suffer significantly.

3. The failure of the Debtors' suppliers to honor or renew contracts could adversely affect the Debtors' business.

The Debtors rely on certain key suppliers. If current suppliers do not honor current contract commitments, or if they terminate agreements or exercise *force majeure* provisions allowing for the temporary suspension of performance, the Debtors' business could be adversely affected. If the Debtors are unsuccessful in renewing contracts or renew contracts on terms less favorable than in the past, or if the Debtors are unable to negotiate contracts with different suppliers on terms favorable to them, the Debtors' business could be adversely impacted.

4. The Debtors' ability to collect payments from the Debtors' customers could be impaired if the customers' creditworthiness deteriorates.

The Debtors' ability to receive payment for coal sold and delivered depends on the continued creditworthiness of the Debtors' customers. If the Debtors determine that a customer is not creditworthy, they may not be required to deliver coal sold under the customer's sales contract. If this occurs, the Debtors may decide to sell the customer's coal on the spot market, which may be at prices lower than the contracted price, or they may be unable to sell the coal at all. Furthermore, the bankruptcy of any of the Debtors' customers could materially and adversely affect the Debtors' financial position. In addition, competition with other coal suppliers could cause the Debtors to extend credit to customers on terms that could increase the risk of payment default.

5. Coal mining is subject to inherent risks and is dependent upon many factors and conditions beyond the Debtors' control, which may cause the Debtors' profitability and the Debtors' financial position to decline.

Coal mining is subject to inherent risks and is dependent upon a number of conditions beyond the Debtors' control that can affect the Debtors' costs and production schedules at particular mines. These risks and conditions include, without limitation:

- variations in geological conditions, such as the thickness of the coal seam and amount of rock embedded in the coal deposit and variations in rock and other natural materials overlying the coal deposit;
- mining, process and equipment or mechanical failures and unexpected maintenance problems;
- adverse weather and natural disasters, such as heavy rains or snow, flooding and other natural events affecting the operations, transportation or customers;
- environmental hazards, such as subsidence and excess water ingress;
- delays and difficulties in acquiring, maintaining or renewing necessary permits or mining rights;
- availability of adequate skilled employees and other labor relations matters;
- unexpected mine accidents, including rock-falls and explosions caused by the ignition of coal dust or other explosive sources at the Debtors' mine sites or fires caused by the spontaneous combustion of coal or similar mining accidents; and
- competition and/or conflicts with other natural resource extraction activities and production within the Debtors' operating areas, such as coalbed methane extraction or oil and gas development.

These risks and conditions could result in damage to or the destruction of the Debtors' mineral properties or production facilities, personal injury or death, environmental damage, delays in mining, monetary losses and legal liability. The Debtors' insurance coverage may not be available or sufficient to fully cover claims that may arise from these risks and conditions.

The Debtors may experience adverse geological conditions in their mines, such as variations in coal seam thickness, variations in the competency and make-up of the roof strata, fault-related discontinuities in the coal seam and the potential for ingress of excessive amounts of methane gas or water. The Debtors are not able to quickly increase production at one mine to offset an interruption in production at another mine. Such adverse conditions may increase the Debtors' cost of sales and their profitability, and may cause them to decide to close a mine. Any of these risks or conditions could have a negative impact on the Debtors' profitability, the cash available from their operations or their financial position.

6. Defects in title of any real property or leasehold interests in the Debtors' properties or associated coal reserves could limit the Debtors' ability to mine or develop these properties or result in significant unanticipated costs.

The Debtors' right to mine some of the Debtors' coal reserves may be materially adversely affected by defects in title or boundaries. The Debtors may not adequately verify title to their leased properties or associated coal or gas reserves until they have committed to developing those properties or coal or gas reserves. The Debtors may not commit to developing property or coal or gas reserves until they have obtained necessary license and permits and completed exploration. Any challenge to the Debtors' title could delay the development of the property and could ultimately result in the loss of some or all of the Debtors' interest in the property or coal or gas reserves and could increase the Debtors' costs. In addition, if the Debtors mines on property that they do not own or lease, they could incur liability for such mining and gas

operations. Some leases have minimum production requirements or require the Debtors to commence mining or gas operations in a specified term to retain the lease. Failure to meet those requirements could result in losses of prepaid royalties and, in some rare cases, could result in a loss of the lease itself.

7. Currently the Debtors have significant mining operations located predominately in central Alabama, making them vulnerable to risks associated with having their production concentrated in one geographic area.

The Debtors' mining operations are primarily geographically concentrated in central Alabama. As a result of this concentration, the Debtors may be disproportionately exposed to the impact of delays or interruptions in production caused by significant governmental regulation, transportation capacity constraints, curtailment of production, extreme weather conditions, natural disasters or interruption of transportation or other events that impact this areas.

8. A significant reduction of, or loss of, purchases by the Debtors' largest customers could adversely affect the Debtors' profitability.

The Debtors derive approximately 62% of their total sales revenues from sales through Alabama Coal Cooperative. There is an existing contract between Alabama Coal Cooperative and Alabama Power Company that unless extended will expire under its terms on December 31, 2022. The Debtors expect this contract to be renewed, extended or for a new supply agreement to be entered into with the Alabama Power Company; however, Alabama Coal Cooperative may be unsuccessful in obtaining such agreements with Alabama Power Company and Alabama Power Company may discontinue purchasing coal from the Alabama Coal Cooperative. If any of the Debtors' major customers were to significantly reduce the quantities of coal they purchase from the Debtors and the Debtors are unable to replace these customers with new customers, or if the Debtors are otherwise unable to sell coal to those customers or on terms favorable to them, the Debtors' profitability could suffer significantly.

9. If transportation for the Debtors' coal becomes unavailable or uneconomic for the Debtors' customers, the Debtors' ability to sell coal could suffer.

Transportation costs can represent a significant portion of the total cost of coal to be delivered to the customer and, as a result, overall price increases in the Debtors' transportation costs could make the Debtors' coal less competitive with the same or alternative products from competitors with lower transportation costs. In addition, disruption of any of the transportation services due to weather related problems, which are variable and unpredictable; strikes or lock-outs; accidents; transportation delays or other events could impair the Debtors' ability to supply their products to their customers, thereby resulting in lost sales and reduced profitability.

An interruption of rail or port services could significantly limit the Debtors' ability to operate and, to the extent that alternate sources of port and rail services are available, could increase transportation and port costs significantly.

10. Significant competition could harm the Debtors' sales, profitability and cash flows.

The consolidation of the coal industry over the last several years has contributed to increased competition among coal producers. Some of the Debtors' competitors have significantly greater financial resources than the Debtors do. This competition may affect domestic and foreign coal supply and associated prices and impact the Debtors' ability to retain or attract coal customers. In addition, these factors may negatively impact the Debtors' collection of trade receivables from their customers. These factors could reduce the Debtors' profitability or result in lower coal sales.

11. The Debtors' businesses are subject to risk of cost increases and fluctuations and delay in the delivery of raw materials, mining equipment and purchased components.

The Debtors' businesses require significant amounts of raw materials, mining equipment and labor. As a result, shortages or increased costs of raw materials, mining equipment and labor could adversely affect the Debtors' business or results of operations. The Debtors' coal mining operations rely on the availability of steel, petroleum products and other raw materials for use in various mining operations. The availability and market prices of these materials are influenced by various factors that are beyond the Debtors' control. Petroleum prices can fluctuate significantly, and pricing for steel scrap has fluctuated markedly. Any inability to secure a reliable supply of these materials or shortages in raw materials used in the operation and manufacturing of mining equipment or replacement parts could negatively impact the Debtors' operating results.

12. Labor disruptions may harm the Debtors' business.

Labor disruptions at the Debtors' operations, and those of key customers or service providers could impede the Debtors' ability to produce and deliver their products, to receive critical equipment and supplies or to collect payment. This may increase the Debtors' costs or impede their ability to operate one or more of their operations.

13. The Debtors require a skilled workforce to run their business. If the Debtors cannot hire qualified people to meet replacement or expansion needs, they may not be able to achieve planned results.

Efficient coal mining using modern techniques and equipment requires skilled laborers with mining experience and proficiency as well as qualified managers and supervisors. The demand for skilled employees sometimes causes a significant constriction of the labor supply resulting in higher labor costs. When coal producers compete for skilled miners, recruiting challenges can occur and employee turnover rates can increase, which negatively affect operating efficiency and costs. If a shortage of skilled workers exists, and the Debtors are unable to train and retain the necessary number of miners, it could adversely affect the Debtors' productivity, costs and ability to expand production.

14. The Debtors have reclamation and mine closure obligations. If the assumptions underlying the Debtors' accruals are inaccurate, they could be required to expend greater amounts than anticipated.

The Surface Mining Control and Reclamation Act and counterpart state laws and regulations in the United States have established operational, reclamation and closure standards for all aspects of surface mining as well as most aspects of deep mining. The Debtors accrue reclamation costs associated with final mine closure. Estimates of the Debtors' total reclamation and mine-closing liabilities are based upon permit requirements and its experience for similar activities. The amounts recorded are dependent upon a number of variables, including the estimated timing and amounts of future retirement costs, estimated proven reserves, assumptions involving profit margins, inflation rates and the assumed credit-adjusted risk-free interest rates. Furthermore, these obligations are unfunded. If these accruals are insufficient or the Debtors' liability in a particular year is greater than currently anticipated, its future operating results could be adversely affected.

15. Inaccuracies in the Debtors' estimates of their coal reserves could result in decreased profitability from lower than expected revenues or higher than expected costs.

The Debtors' future performance depends on, among other things, the accuracy of their estimates of their proven and probable coal reserves. Reserve estimates are based on a number of sources of information, including engineering, geological, mining and property control maps, the Debtors' operational experience of historical production from similar areas with similar conditions and assumptions governing future pricing and operational costs. The Debtors update their estimates of the quantity and quality of proven and probable coal reserves at least annually to reflect the production of coal from the reserves, updated geological models and mining recovery data, the tonnage contained in new lease areas acquired and estimated costs of production and sales prices. There are numerous factors and assumptions inherent in estimating coal quantities, qualities and costs to mine, including many factors beyond the Debtors' control such as the following:

- quality of the coal;
- geological and mining conditions, which may not be fully identified by available exploration data and/or may differ from the Debtors' experiences in areas where it currently mines;
- the percentage of coal ultimately recoverable;
- the assumed effects of regulation, including the issuance of required permits, taxes, including severance and excise taxes and royalties, and other payments to governmental agencies;
- assumptions concerning the timing of the development of the reserves; and
- assumptions concerning the equipment and operational productivity, future coal prices, operating costs, including for critical supplies such as fuel, tires and explosives, capital expenditures and development and reclamation costs.

As a result, estimates of the quantities and qualities of economically recoverable coal attributable to any particular group of properties, classifications of reserves based on risk of recovery, estimated cost of production, and estimates of future net cash flows expected from these properties as prepared by different engineers or by the same engineers at different times, may vary materially due to changes in the above factors and assumptions. Actual production recovered from identified reserve areas and properties, and revenues and expenditures associated with the Debtors' mining operations may vary materially from estimates. Any inaccuracy in the Debtors' estimates related to their reserves could result in decreased profitability from lower than expected revenues and/or higher than expected costs.

16. The Debtors' inability to develop coal reserves in an economically feasible manner or their inability to acquire additional coal reserves may adversely affect their business.

The Debtors' long-term profitability depends in part on their ability to cost effectively mine and process coal reserves that possess the quality characteristics desired by their customers. As the Debtors mine, their coal reserves decline. As a result, the Debtors' future success depends upon their ability to develop or acquire additional coal reserves that are economically recoverable. The Debtors may not be able to obtain adequate economically recoverable replacement reserves when they require them. If available, replacement reserves may not be available at favorable prices or the Debtors may not be capable of mining those reserves at costs that are comparable with their existing coal reserves.

Additionally, the Debtors may not be able to accurately assess the geological characteristics of reserves that they now own or subsequently acquire, which may adversely affect their profitability and

financial condition. Exhaustion of reserves at particular mines also may have an adverse effect on the Debtors' operating results that is disproportionate to the percentage of overall production represented by those mines. The Debtors' ability to acquire other reserves in the future could be limited by, among other factors, their financial position, restrictions under their existing or future debt agreements, competition from other coal companies for attractive properties, and the lack of suitable acquisition candidates available on commercially reasonable terms. If the Debtors are unable to replace or increase their coal reserves on acceptable terms, their production and revenues will decline as their reserves are depleted and their future profits will be detrimentally impacted.

17. Extensive environmental, health and safety laws and regulations impose significant costs on the Debtors' operations and future regulations could increase those costs, limit their ability to produce or adversely affect the demand for their products.

The Debtors' businesses are subject to numerous federal, state, and local laws and regulations with respect to matters such as:

- employee health and safety, including:
- occupational safety and health;
- mine health and safety;
- workers' compensation; and
- black lung;
- reclamation and restoration of property; and
- environmental laws and regulations, including:
- greenhouse gases and climate change;
- air quality standards;
- water quality standards;
- management of materials generated by mining and coking operations;
- the storage, treatment and disposal of wastes;
- remediation of contaminated soil and groundwater; and
- protection of human health, plant-life and wildlife, including endangered species, and emergency planning and community right to know.

Compliance with these regulations may be costly and time-consuming and may delay commencement or interrupt continuation of exploration or production at one or more of the Debtors' operations. These laws are constantly evolving and becoming increasingly stringent. The ultimate impact of complying with existing laws and regulations is not always clearly known or determinable due in part to the fact that certain implementing regulations for these laws have not yet been promulgated and in certain

instances are undergoing revision. These laws and regulations, particularly new legislative or administrative proposals (or judicial interpretations of existing laws and regulations), could result in substantially increased capital, operating and compliance costs and could have a material adverse effect on the Debtors' operations or their customers' ability to use the Debtors' products. In addition, the coal industry in the U.S. is affected by significant legislation mandating certain benefits for current and retired coal miners.

The Debtors strive to conduct their mining operations in compliance with all applicable federal, state and local laws and regulations. However, due in part to the extensive and comprehensive regulatory requirements, along with changing interpretations of these requirements, violations occur from time to time in the Debtors' industry and at their operations. In recent years, expenditures at the Debtors' U.S. operations for regulatory or environmental obligations have been for safety or process changes as well as complying with ongoing monitoring or investigation obligations. Although it is not possible at this time to predict the final outcome of these rule-making and standard-setting efforts, it is possible that the magnitude of these changes will require an unprecedented compliance effort on the Debtors' part, could divert management's attention, and may require significant expenditures. To the extent that these expenditures, as with all costs, are not ultimately reflected in the prices of the Debtors' products and services, operating results will be detrimentally impacted. The Debtors believe that their major North American competitors are confronted by substantially similar conditions and thus do not believe that their relative position with regard to such competitors is materially affected by the impact of environmental laws and regulations. However, the costs and operating restrictions necessary for compliance with environmental laws and regulations, which is a major cost consideration for the Debtors' operations, may have an adverse effect on their competitive position with regard to foreign producers and operators who may not be required to undertake equivalent costs in their operations. In addition, the specific impact on each competitor may vary depending on a number of factors, including the age and location of its operating facilities, applicable state or provincial legislation and its production methods.

18. Federal, state or provincial regulatory agencies have the authority to order certain of the Debtors' mines to be temporarily or permanently closed under certain circumstances, which could materially and adversely affect their ability to meet their customers' demands.

Federal, state and local regulatory agencies have the authority under certain circumstances following significant health and safety incidents, such as fatalities, to order a mine to be temporarily or permanently closed. If this occurred, the Debtors may be required to incur capital expenditures to re-open the mine. In the event that these agencies order the closing of the Debtors' mines, the Debtors' coal sales contracts generally permit them to issue *force majeure* notices, which would suspend their obligations to deliver coal under these contracts; however, their customers may challenge their issuances of *force majeure* notices. If these challenges are successful, the Debtors may have to purchase coal from third-party sources, if available, to fulfill these obligations or incur capital expenditures to re-open the mines and/or negotiate settlements with the customers, which may include price reductions, the reduction of commitments, and the extension of time for delivery or terminate customers' contracts. Any of these actions could have a material adverse effect on the Debtors' business and results of operations.

19. Increased focus by regulatory authorities on the effects of coal mining on the environment and recent regulatory developments related to coal mining operations could make it more difficult or increase the Debtors' costs to receive new permits or to comply with their existing permits to mine coal or otherwise adversely affect the Debtors.

Regulatory agencies are increasingly focused on the effects of coal mining on the environment, particularly relating to water quality, which has resulted in more rigorous permitting requirements and enforcement efforts.

The Surface Mining Control and Reclamation Act of 1977 (“SMCRA”), requires that comprehensive environmental protection and reclamation standards be met during the course of and following completion of mining activities. The SMCRA and the agency it creates, the Surface Mining and Reclamation Commission, regulate both surface and underground coal mining permits for all mining operations must be obtained from the Federal Office of Surface Mining Reclamation and Enforcement or, where state regulatory agencies have adopted federally approved state programs under the Act, the appropriate state regulatory authority. In Alabama, the Alabama Surface Mining Commission reviews and approves SMCRA permits.

SMCRA permit provisions include requirements for coal prospecting, mine plan development, topsoil removal, storage and replacement, selective handling of overburden materials, mine pit backfilling and grading, subsidence control for underground mines, surface drainage control, mine drainage and mine discharge control, treatment and revegetation. These requirements seek to limit the adverse impacts of coal mining and more restrictive requirements may be adopted from time to time.

Before a SMCRA permit is issued, a mine operator must submit a bond or otherwise secure the performance of reclamation obligations. The Abandoned Mine Land Fund, which is part of SMCRA, imposes a general funding fee on all coal produced. The proceeds are used to reclaim mine lands closed or abandoned prior to 1977. On December 7, 2006, the Abandoned Mine Land Program was extended for another 15 years.

SMCRA stipulates compliance with many other major environmental statutes, including: the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation and Liability Act.

Section 404 of the U.S. Clean Water Act (“CWA”) requires mining companies to obtain United States Army Corps of Engineers (“USACE”) permits to place material in streams for the purpose of creating slurry ponds, water impoundments, refuse areas, valley fills or other mining activities. As is the case with other coal mining companies, the Debtors construction and mining activities require Section 404 permits. The issuance of permits to construct valley fills and refuse impoundments under Section 404 of the CWA has been the subject of many court cases and increased regulatory oversight, resulting in additional permitting requirements that are expected to delay or even prevent the opening of new mines. Stringent water quality standards for materials such as selenium have recently been issued. The Debtors have begun to incorporate these new requirements into their permit applications; however, there can be no guarantee that they will be able to meet these or any other new standards with respect to their permit applications.

In April 2010, the EPA issued comprehensive guidance to provide clarification as to the water quality standards that should apply when reviewing CWA permit applications for Appalachian surface coal mining operations. This guidance establishes threshold conductivity levels to be used as a basis for evaluating compliance with narrative water quality standards. To obtain necessary permits, the Debtors’ and other mining companies are required to meet these requirements. The U.S. District Court for the District of Columbia ruled that the EPA overstepped its statutory authority under the CWA and SMCRA, and infringed on the authority reserved to state regulators under those statutes when it issued the guidance. The EPA appealed the decision and the D.C. Circuit Court reversed the ruling and upheld the EPA’s guidance document relating to such permits, against challenges from the mining industry and two states. Surface mining water permits could be subject to more substantial review in the future.

The West Virginia Highlands Conservancy, the Ohio Valley Environmental Coalition and Sierra Club — represented by Appalachian Mountain Advocates and Public Justice — recently settled a lawsuit challenging a coal company’s violation of narrative water quality standards. Narrative water quality

standards do not place numeric limits on pollutants, but instead require pollution to remain below a level that would impair a stream's aquatic ecosystem.

Additionally, in January 2011, the EPA rescinded a federal CWA permit held by another coal mining company for a surface mine in Appalachia citing associated environmental damage and degradation. While the Debtors' operations are not directly impacted, this could be an indication that other surface mining water permits could be subject to more substantial review in the future. A federal judge reversed the decision by the EPA to revoke the permit and the EPA appealed the decision. On April 23, 2013, the D.C. Circuit ruled that the EPA has the power under the CWA to retroactively veto a section 404 dredge and fill permit "whenever" it makes a determination about certain adverse effects, even years after the USACE has granted the permit to an applicant. The owner of the coal mine, coal industry groups and others, including several states petitioned the U.S. Supreme Court to review and reverse the ruling; on March 24, 2014, the Court denied the petitions for review. In September 2014, the D.C. District Court ruled again in the EPA's favor, and the coal mining company has appealed the decision.

On June 29, 2015, the EPA and the USACE jointly promulgated a rule redefining the scope of waters protected under the CWA. The rule revised regulations that have been in place for more than 25 years in response to 2001 and 2006 Supreme Court rulings that interpreted the regulatory scope of the CWA more narrowly than previously, but created uncertainty about the precise effect of the Court's decisions.

It is unknown what future changes will be implemented to the permitting review and issuance process or to other aspects of mining operations, but the increased regulatory focus, future laws and judicial decisions and any other future changes could materially and adversely affect all U.S. coal mining companies.

In particular, in each jurisdiction in which the Debtors operate, the Debtors will incur additional permitting and operating costs, could be unable to obtain new permits or maintain existing permits and could incur fines, penalties and other costs, any of which could materially adversely affect its business. If surface coal mining methods are limited or prohibited, it could significantly increase the Debtors' operational costs and make it more difficult to economically recover a significant portion of its reserves. In the event that the Debtors cannot increase the price it charges for coal to cover the higher production costs without reducing customer demand for its coal, there could be a material adverse effect on its financial condition and results of operations. In addition, increased public focus on the environmental, health and aesthetic impacts of surface coal mining could harm the Debtors' reputation and reduce demand for coal.

20. Climate change concerns could negatively affect the Debtors' results of operations and cash flows.

The combustion of fossil fuels, such as the coal that the Debtors produce, results in the creation of carbon dioxide that is currently emitted into the atmosphere by end-users. Further, some of the Debtors' operations emit greenhouse gases ("GHGs") directly, such as methane release resulting from coal mining. Methane is considered a GHG and is a major source of concern with respect to global warming, also known as climate change. Climate change continues to attract public and scientific attention and increasing government attention is being paid to reducing GHG emissions.

There are many legal and regulatory approaches currently in effect or being considered to address GHGs, including possible future U.S. treaty commitments, new federal or state legislation that may impose a carbon emissions tax or establish a "cap and trade" program, and regulation by the EPA.

Existing laws and regulations or other current and future efforts to stabilize or reduce GHG emissions, could adversely impact the demand for, price of and value of the Debtors' products and reserves. Passage of

additional state, provincial, federal or foreign laws or regulations regarding GHG emissions or other actions to limit GHG emissions could result in users switching from coal to other alternative clean fuel substitutes. The anticipation of such additional requirements could also lead to reduced demand for some of the Debtors' products. Alternative clean fuels, including non-fossil fuels, could become more attractive than coal in order to reduce GHG emissions, which could result in a reduction in the demand for coal, and therefore the Debtors' revenues. As the Debtors' operations also emit GHGs directly, current or future laws or regulations limiting GHG emissions could increase its own costs. Although the potential impacts on the Debtors of additional climate change regulation are difficult to reliably quantify, they could be material.

21. The Debtors' operations may impact the environment or cause exposure to hazardous substances and their properties may have environmental contamination, which could result in material liabilities.

The Debtors' operations currently use hazardous materials and generate hazardous wastes from time to time. The Debtors could become subject to claims for toxic torts, natural resource damages and other damages as well as for the investigation and cleanup of soil, surface water, groundwater and other media. Such claims may arise, for example, out of conditions at sites that the Debtors currently own or operate, as well as at sites that the Debtors previously owned or operated, or may acquire. The Debtors' liability for such claims may be joint and several, so that they may be held responsible for more than their share of the contamination or other damages, or even for the entire amount of damages assessed.

EPA's final coal ash rule was published in April, 2015 and regulates coal ash as a solid waste under Subtitle D of RCRA as opposed to regulation as a Subtitle C hazardous waste. It also requires closure of sites that fail to meet prescribed engineering standards or retrofitting with liners, requires regular inspections of impoundments, establishes limits on the location of new sites, and requires immediate remediation and closure of unlined ponds that are polluting ground water. The issue represents added costs for coal-fired power plants.

The Debtors maintain extensive coal refuse areas and slurry impoundments at their mining complexes. Such areas and impoundments are subject to extensive regulation. Slurry impoundments have been known to fail, releasing large volumes of coal slurry into the surrounding environment. Structural failure of an impoundment can result in extensive damage to the environment and natural resources, such as bodies of water that the coal slurry reaches, as well as create liability for related personal injuries, property damages and injuries to wildlife. Some of the Debtors' impoundments overlie mined out areas, which can pose a heightened risk of failure and the assessment of damages arising out of such failure. If one of the Debtors' impoundments were to fail, they could be subject to substantial claims for the resulting environmental contamination and associated liability, as well as for related fines and penalties.

Drainage flowing from or caused by mining activities can be acidic with elevated levels of dissolved metals, a condition referred to as "acid mine drainage" ("AMD"). Treatment of AMD can be costly. Although the Debtors do not currently face material costs associated with AMD, it is possible that they could incur significant costs in the future.

These and other similar unforeseen impacts that the Debtors' operations may have on the environment, as well as exposures to hazardous substances or wastes associated with the Debtors' operations, could result in costs and liabilities that could materially and adversely affect them.

22. The Debtors' executive officers and other key personnel are important to their success and the loss of one or more of these individuals could harm their business.

The Debtors' executive officers and other key personnel have significant experience in the businesses in which they operate and the loss of certain of these individuals could harm their business. Although the Debtors have been successful in attracting qualified individuals for key management and corporate positions in the past, there can be no assurance that the Debtors will continue to be successful in attracting and retaining a sufficient number of qualified personnel in the future. The loss of key management personnel could harm the Debtors' ability to successfully manage their business functions, prevent the Debtors from executing their business strategy and have an adverse effect on their results of operations and cash flows.

23. Terrorist attacks and threats, escalation of military activity in response to such attacks or acts of war may negatively affect the Debtors' business, financial condition and results of operations.

Terrorist attacks against U.S. targets, rumors or threats of war, actual conflicts involving the U.S. or their allies, as well as military or trade disruptions affecting the Debtors' customers or the economy as a whole may materially adversely affect the Debtors' operations or those of their customers. As a result, there could be delays or losses in transportation and deliveries of coal to the Debtors' customers, decreased sales of their coal and extension of time for payment of accounts receivable from their customers. Strategic targets such as energy-related assets may be at greater risk of future terrorist attacks than other targets in the U.S. In addition, disruption or significant increases in energy prices could result in government-imposed price controls. Any of these occurrences, or a combination of them, could have a material adverse effect on the Debtors' business, financial condition or results of operations.

24. The Debtors are exposed to significant liability, reputational harm, loss of revenue, increased costs or other risks if they sustain cyber-attacks or other security breaches that disrupt their operations or result in the dissemination of proprietary or confidential information about the Debtors, their customers or other third-parties.

The Debtors have implemented security protocols and systems with the intent of maintaining the physical security of their operations and protecting them and their counterparties' confidential information and information related to identifiable individuals against unauthorized access. Despite such efforts, the Debtors may be subject to security breaches, which could result in unauthorized access to their facilities or the information they are trying to protect. Unauthorized physical access to one of the Debtors' facilities or electronic access to their information systems could result in, among other things, unfavorable publicity, litigation by affected parties, damage to sources of competitive advantage, disruptions to their operations, loss of customers, financial obligations for damages related to the theft or misuse of such information and costs to remediate such security vulnerabilities, any of which could have a substantial impact on the Debtors' results of operations, financial condition or cash flows.

C. Disclosure Statement Disclaimer

1. Information Contained in this Disclosure Statement is for Soliciting Votes

The information contained in this Disclosure Statement is for the purposes of soliciting acceptances of the Plan and may not be relied upon for any other purpose.

2. No Legal, Business, Accounting, or Tax Advice Is Provided to You by this Disclosure Statement

This Disclosure Statement is not advice to you. The contents of this Disclosure Statement should not be construed as legal, business, accounting, or tax advice. Each Holder of a Claim or Equity Interest

should consult such Holder's own legal counsel, accountant, or other applicable advisor with regard to any legal, business, accounting, tax, and other matters concerning his or her Claim or Equity Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

3. No Admissions Made

The information and statements contained in this Disclosure Statement will neither (a) constitute an admission of any fact or liability by any Entity (including, without limitation, the Debtors and Reorganized Debtors), nor (b) be deemed evidence of the tax or other legal effects of the Plan.

4. Failure to Identify Litigation Claims or Projected Objections

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim is, or is not, identified in this Disclosure Statement. The Debtors or the Reorganized Debtors may seek to investigate, file, and prosecute Claims and Equity Interests and may object to Claims after the Confirmation Date or Effective Date of the Plan irrespective of whether this Disclosure Statement identifies such Claims or Interests or objections to such Claims or Interests.

5. No Waiver of Right to Object or Right to Recover Transfers and Assets

The vote by a Holder of a Claim for or against the Plan does not constitute a waiver or release of any claims, causes of action, or rights of the Debtors or Reorganized Debtors (or any Entity, as the case may be) to object to that Holder's Claim, or recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any claims or causes of action of the Debtors or their respective Estates are specifically or generally identified in this Disclosure Statement.

6. Information Was Provided by the Debtors and Was Relied Upon by the Debtors' Advisors

The Debtors' advisors have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although the Debtors' advisors have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not verified independently the information contained in this Disclosure Statement.

7. Potential Exists for Inaccuracies, and the Debtors Have No Duty to Update

The statements contained in this Disclosure Statement are made by the Debtors as of the date of this Disclosure Statement, unless otherwise specified in this Disclosure Statement, and the delivery of this Disclosure Statement after the date of this Disclosure Statement does not imply that there has not been a change in the information set forth in this Disclosure Statement since that date. While the Debtors have used their reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtors nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtors may subsequently update the information in this Disclosure Statement, the Debtors have no affirmative duty to do so unless ordered to do so by the Bankruptcy Court.

8. No Representations Outside this Disclosure Statement Are Authorized

No representations concerning or relating to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure

Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, should not be relied upon by you in arriving at your decision. You should promptly report unauthorized representations or inducements to the counsel to the Debtors and the Bankruptcy Administrator.

ARTICLE VII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

A. Introduction

The following discussion summarizes certain significant U.S. federal income tax consequences arising from the consummation of the Plan to the Debtors and certain beneficial owners of Allowed Claims that are entitled to vote on the Plan (such holders, the “Holders”). This description is for informational purposes only and, due to a lack of certain facts and of definitive judicial or administrative authority or interpretation, uncertainties exist with respect to various tax consequences of the Plan, as discussed herein. Only the principal U.S. federal income tax consequences of the Plan for the Debtors and the Holders are described below.

This summary is based upon the U.S. Internal Revenue Code of 1986, as amended (the “Code”), existing and proposed Treasury Regulations promulgated thereunder (“Treasury Regulations”) and U.S. judicial decisions and administrative pronouncements, all as in effect as of the date hereof. All of the preceding authorities are subject to change, possibly with retroactive effect, which may result in U.S. federal income tax consequences different from those discussed below. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan. No rulings or determinations of the U.S. Internal Revenue Service (the “IRS”) or any other tax authorities have been sought or obtained with respect to any tax consequences of the Plan and the discussion below is not binding on the IRS or such other authorities. In addition, a significant amount of time may elapse between the date of this Disclosure Statement and the consummation of the Plan. Events occurring after the date of the Disclosure Statement, including changes in law and changes in administrative positions, could affect the U.S. federal income tax consequences of the Plan. No representations are being made regarding the particular tax consequences of the confirmation and consummation of the Plan to the Debtors or any Holder. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed herein.

Except as otherwise specifically stated herein, this summary does not address any estate, gift, state, local, or foreign law tax consequences of the Plan. Furthermore, this discussion does not address all tax considerations that might be relevant to particular Holders in light of their personal circumstances or to persons that are subject to special tax rules. In addition, this description of certain U.S. federal income tax consequences does not address the tax treatment of special classes of Holders, such as financial institutions, regulated investment companies, real estate investment trusts, tax-exempt entities, insurance companies, Holders holding Claims as part of a hedging, integrated or conversion transaction, constructive sale or “straddle,” U.S. expatriates, persons subject to the alternative minimum tax, Holders that have a “functional currency” other than the U.S. dollar and dealers or traders in securities or currencies.

For purposes of this discussion, a “U.S. Holder” is a Holder that is: (1) an individual citizen or resident of the U.S. for U.S. federal income tax purposes; (2) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the U.S. or any state thereof or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of their source; or (4) a trust (A) if a court within the U.S. is able to exercise primary jurisdiction over their administration and one or more U.S. persons have authority to control all substantial decisions of the trust or (B) that has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

For purposes of this discussion, a “Non-U.S. Holder” is a Holder that is neither a U.S. Holder nor an entity treated as a partnership for U.S. federal income tax purposes.

If a partnership or other pass-through entity is a Holder, the tax treatment of a partner or other owner generally will depend upon the status of the partner (or other owner) and the activities of the entity. Partners (or other owners) of pass-through entities that are Holders should consult their own tax advisors regarding the tax consequences of the Plan.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOLLOWING DISCUSSION IS FOR GENERAL INFORMATION ONLY, DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER’S CIRCUMSTANCES AND INCOME TAX SITUATION, AND IS NOT INTENDED TO BE, NOR SHOULD IT BE CONSTRUED TO BE, LEGAL OR TAX ADVICE TO ANY HOLDER. NO OPINION OR REPRESENTATION WITH RESPECT TO THE U.S. FEDERAL INCOME TAX CONSEQUENCES TO ANY SUCH HOLDER IS MADE. EACH HOLDER IS URGED TO CONSULT THE HOLDER’S OWN TAX ADVISOR REGARDING THE PARTICULAR TAX CONSEQUENCES TO IT OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICATION OF U.S. FEDERAL, STATE AND LOCAL TAX LAWS, AS WELL AS ANY APPLICABLE FOREIGN TAX LAWS, TO A HOLDER’S PARTICULAR SITUATION, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

B. Certain Material United States Federal Income Tax Consequences to the Debtors

1. Gain or Loss Pursuant to the Plan

Upon implementation of the Plan, the Debtors’ aggregate outstanding indebtedness will be discharged. In general, if a debtor conveys appreciated (or depreciated) property (i.e., property having an adjusted tax basis less (or greater) than its fair market value) to a creditor in cancellation of debt, the debtor must recognize taxable gain or loss (which may be ordinary income or loss, capital gain or loss, or a combination of each) equal to the excess or shortfall, respectively, of such fair market value over the debtor’s adjusted tax basis in such property. Such gain from the deemed distributions or actual conveyances of property to the Holders of Claims (or gain from other asset dispositions) may be offset by operating losses from the current year or the Debtors’ net operating loss (“NOL”) and/or capital loss carryforwards from prior years subject to certain limitations.

2. Cancellation of Debt Income

In general, absent an exception, a debtor will realize and recognize cancellation of debt income (“COD Income”) upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of COD Income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, less (b) the sum of (x) the amount of Cash paid, and (y) the fair market value of any other consideration (including stock of the debtor) given in satisfaction of such indebtedness at the time of the exchange.

A debtor will not, however, be required to include any amount of COD Income in gross income if the debtor is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to a plan approved by the court in that proceeding. Instead, as a consequence of such exclusion, a debtor generally must reduce its tax attributes by the amount of COD Income that it excluded from gross income under section 108 of the Code. In general, tax attributes will be reduced in the following order: (a) NOLs; (b) most tax credits and capital loss carryovers; (c) tax basis in assets; and

(d) foreign tax credits. A debtor's tax basis in its assets generally may not be reduced below the amount of liabilities remaining immediately after the discharge of indebtedness. A debtor with COD Income may elect first to reduce the basis of its depreciable assets under section 108(b)(5) of the Code. Where the borrower joins in the filing of a consolidated U.S. federal income tax return, applicable Treasury Regulations require, in certain circumstances, that the tax attributes of the consolidated subsidiaries of the borrower and other members of the group also be reduced. The reduction in tax attributes occurs only after the tax for the year of the debt discharge has been determined. Any excess COD Income over the amount of available tax attributes is not subject to United States federal income tax.

As a result of the discharge of Claims pursuant to the Plan, the Debtors will realize substantial COD Income. Although it is expected that a reduction in the Debtors' tax attributes will be required, the exact amount of such reduction cannot be predicted at this time.

3. Potential Limitations on NOL Carryforwards and Other Tax Attributes

Following the Effective Date, any remaining loss carryforwards and certain other tax attributes (including current year NOLs or net unrealized built-in losses) allocable or attributable to periods prior to the Effective Date (collectively, "pre-change losses") may be subject to limitation under section 382 of the Code as a result of the changes in ownership of the Debtors. These limitations apply in addition to, and not in lieu of, the attribute reduction that results from the COD Income arising in connection with the Plan.

Under section 382 of the Code, if a corporation (or consolidated group) undergoes an "ownership change" and the corporation does not qualify for (or elects out of) the special bankruptcy exception discussed below, the amount of its pre-change losses that may be utilized to offset future taxable income is subject to an annual limitation. The issuance of the new common stock pursuant to the Plan may constitute an "ownership change" which will result in a limitation under section 382 of the Code.

If the issuance of the new common stock pursuant to the Plan does constitute an "ownership change" under section 382 of the Code, in general, the amount of the annual limitation to which a corporation (or consolidated group) that undergoes an ownership change would be subject to is equal to the product of (i) the fair market value of the stock of the corporation (or, in the case of a consolidated group, the common parent) immediately before the ownership change (with certain adjustments) multiplied by (ii) the "long term tax exempt rate" in effect for the month in which the ownership change occurs. As discussed below, this annual limitation often may be increased in the event the corporation (or consolidated group) has an overall "built-in" gain in its assets at the time of the ownership change. Conversely, to the extent the corporation (or consolidated group) has an overall "built-in" loss, the recognition of any such losses may be subject to the section 382 limitation. For a corporation (or consolidated group) in bankruptcy that undergoes an ownership change pursuant to a confirmed bankruptcy plan, the stock value generally is determined immediately after (rather than before) the ownership change after giving effect to the surrender of creditors' claims, but subject to certain adjustments (which can result in a reduced stock value); in no event, however, can the stock value for this purpose exceed the pre-change gross value of the corporation's assets.

Any portion of the annual limitation that is not used in a given year may be carried forward, thereby adding to the annual limitation for the subsequent taxable year. However, if the corporation (or the consolidated group) does not continue its historic business or use a significant portion of its historic assets in a new business for at least two years after the ownership change, or possibly if certain shareholders claim worthless stock deductions and continue to hold their stock in the corporation (or the parent of the consolidated group) at the end of the taxable year, the annual limitation resulting from the ownership change is reduced to zero, thereby precluding any utilization of the corporation's pre-change losses, absent any increases due to recognized built-in gains discussed below.

Accordingly, the impact of an ownership change of the Debtors pursuant to the Plan depends upon, among other things, the amount of pre-change losses remaining after the reduction of attributes due to the COD, the value of both the stock and assets of the Reorganized Debtors at such time, the continuation of its businesses, and the amount and timing of future taxable income.

4. Built In Gains and Losses

Section 382 of the Code can operate to limit the deduction of built-in losses recognized subsequent to the date of the ownership change. If a loss corporation (or consolidated group) has a net unrealized built-in loss at the time of an ownership change (taking into account most assets and items of “built-in” income, gain, loss and deduction), then any built-in losses recognized during the following five years (up to the amount of the original net unrealized built-in loss) generally will be treated as pre-change losses and similarly will be subject to the annual limitation.

Conversely, if the loss corporation (or consolidated group) has a net unrealized built-in gain at the time of the ownership change, any built-in gains recognized (or, according to an IRS notice, treated as recognized) during the following five years (up to the amount of the original net unrealized built-in gain) generally will increase the annual limitation in the year recognized, such that the loss corporation (or consolidated group) would be permitted to use its pre-change losses against such built-in gain income in addition to its regular annual allowance.

Although the rule applicable to net unrealized built-in losses generally applies to consolidated groups on a consolidated basis, certain corporations that join the consolidated group within the preceding five years may not be able to be taken into account in the group computation of net unrealized built-in loss. Such corporations would nevertheless be taken into account in determining whether the consolidated group has a net unrealized built-in gain. In general, a loss corporation’s (or consolidated group’s) net unrealized built-in gain or loss will be deemed to be zero unless it is greater than the lesser of (i) \$10 million or (ii) 15% of the fair market value of its assets (with certain adjustments) before the ownership change. Whether Debtors will benefit from adjustment for “built-in” gains or be subject to the limitation for “built-in” losses will depend upon the value of its assets immediately before the Effective Date, but it is estimated the Debtors have a significant consolidated net- unrealized built-in loss.

5. Special Bankruptcy Exception

The application of section 382 of the Code will be materially different from that described above if the Debtors are subject to the special rules for corporations in bankruptcy provided in section 382(1)(5) of the Code. The Debtors generally would qualify for the special rules provided in section 382(1)(5) of the Code if the historic equity holders and certain Claim Holders of the Debtors, taken together, own equity interests representing at least 50% of the voting power and equity value of the Debtors pursuant to the consummation of a chapter 11 plan. In that case, the Debtors’ ability to use their pre- Effective Date NOLs would not be limited as described above. However, several other limitations would apply to the Debtors under section 382(1)(5), including (a) the Debtors’ NOLs would be calculated without taking into account deductions for interest paid or accrued in the portion of the current tax year ending on the Effective Date and all other tax years ending during the three-year period prior to the current tax year with respect to the debt securities that are exchanged pursuant to the Plan, and (b) if the Debtors undergo another ownership change within two years after the Effective Date, the Debtors’ section 382 limitation following that ownership change will be zero. It is uncertain whether the provisions of section 382(1)(5) will be available in the case of the ownership change that is expected to occur as a result of the consummation of the Plan. If the Debtors qualify for the special rule under section 382(1)(5), the use of the Debtors’ NOLs will be subject to section 382(1)(5) of the Code unless the Debtors affirmatively elect for the provisions not to apply.

If the Debtors do not qualify for, or elect not to apply, the special rule under section 382(l)(5) of the Code described above, the provisions of section 382(l)(6) applicable to corporations under the jurisdiction of a bankruptcy court may apply in calculating the annual section 382 limitation. Under this rule, the limitation will be calculated by reference to the lesser of the value of the new common stock (with certain adjustments) immediately after the ownership change or the value of the Debtors assets (determined without regard to liabilities) immediately before the ownership change. Although such calculation may substantially increase the annual section 382 limitation, the Debtors' use of any NOLs or other tax attributes remaining after implementation of the Plan may still be substantially limited after an ownership change.

Because a relatively small number of Claim Holders will hold a significant equity position in the Reorganized Debtors following consummation of the Plan, if such Claim Holders dispose of all or a significant amount of this position after the Effective Date, it could cause the Debtors to undergo an ownership change. If an additional ownership change were to occur, it would generally limit (or possibly eliminate) the Debtors' ability to use NOLs and other tax attributes following such additional ownership change.

6. Alternative Minimum Tax

In general, a U.S. federal alternative minimum tax ("AMT") is imposed on a corporation's alternative minimum taxable income at a 20% rate to the extent that such tax exceeds the corporation's regular U.S. federal income tax. For purposes of computing taxable income for AMT purposes, certain tax deductions and other beneficial allowances are modified or eliminated. In particular, even though a corporation otherwise might be able to offset all of its taxable income for regular tax purposes by available NOL carryforwards, only 90% of a corporation's taxable income for AMT purposes may be offset by available NOL carryforwards (as computed for AMT purposes).

In addition, if a corporation (or consolidated group) undergoes an "ownership change" within the meaning of section 382 of the Code and it is in a net unrealized built-in loss position (as determined for AMT purposes) on the date of the ownership change, the corporation's (or consolidated group's) aggregate tax basis in its assets would be reduced for certain AMT purposes to reflect the fair market value of such assets as of the change date. The section 382(l)(5) exception does not apply to AMT adjustments for built-in losses resulting from an ownership change.

Any AMT that a corporation pays generally will be allowed as a nonrefundable credit against their regular federal income tax liability in future taxable years when the corporation is no longer subject to the AMT.

C. Certain U.S. Federal Income Tax Considerations for U.S. Holders of Secured Claims

The U.S. federal income tax consequences of the Plan to a U.S. Holder depends, in part, on whether the U.S. Holder's existing Claims constitute "securities" for U.S. federal income tax purposes (such that the exchange would qualify for "recapitalization" treatment under the Code).

The term "security" is not defined in the Code or in the Treasury Regulations issued thereunder and has not been clearly defined by judicial decisions. The classification of a debt instrument as a security is a determination based on all facts and circumstances, including, but not limited to: (i) the term (i.e., duration) of the instrument, (ii) whether or not the instrument is secured, (iii) the degree of subordination of the debt instrument, (iv) the ratio of debt to equity of the issuer and (v) the riskiness of the business of the issuer. One of the most significant factors considered in determining whether a particular debt is a security is their original term. In general, debt obligations issued with a weighted average maturity at issuance of less than five years

do not constitute securities, whereas debt obligations with a weighted average maturity of at least ten (10) years or more constitute securities. Additionally, the IRS has ruled that new debt instruments with a term of less than five (5) years issued in exchange for and bearing the same terms (other than interest rate) as securities should also be classified as securities for this purpose, because the new debt represented a continuation of the holder's investment in the corporation in substantially the same form.

1. Character of Gain or Loss

Where gain or loss is recognized by a U.S. Holder in respect of the satisfaction and exchange of its Claim, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including, among others, the tax status of the U.S. Holder, whether the Claim constitutes a capital asset in the hands of the U.S. Holder and how long it has been held, whether the Claim was acquired at a market discount, and whether and to what extent the U.S. Holder previously had claimed a bad debt deduction. Each Holder of a Claim is urged to consult its tax advisor for a determination of the character of any gain or loss recognized in respect to the satisfaction of its Claim.

U.S. Holders of Claims that recognize capital losses as a result of the distributions under the Plan will be subject to limits on their use of such capital losses. For noncorporate U.S. Holders, capital losses may be used to offset any capital gains (without regard to holding periods) plus ordinary income to the extent of the lesser of (1) \$3,000 (\$1,500 for married individuals filing separate returns) or (2) the excess of the capital losses over the capital gains. U.S. Holders, other than corporations, may carry over unused capital losses and apply them to capital gains and a portion of their ordinary income for an unlimited number of years. For corporate U.S. Holders, losses from the sale or exchange of capital assets may only be used to offset capital gains. Corporate U.S. Holders may only carry over unused capital losses for the five (5) taxable years following the capital loss year, but are allowed to carry back unused capital losses to the three (3) taxable years preceding the capital loss year.

A U.S. Holder that purchased its existing notes from a prior Holder at a "market discount" may be subject to the market discount rules of the Code. In general, a debt instrument is considered to have been acquired with "market discount" if its holder's adjusted tax basis in the debt instrument is less than (i) the sum of all remaining payments to be made on the debt instrument, excluding "qualified stated interest" (generally, a constant stated amount of interest payable in cash at least annually) or (ii) in the case of a debt instrument issued with OID, its adjusted issue price, by at least a de minimis amount (equal to 0.25% of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Under these rules, any gain recognized on the exchange of such existing notes generally would be treated as ordinary income to the extent of the market discount accrued during the U.S. Holder's period of ownership, unless the U.S. Holder elected to include the market discount in income as it accrued. If a U.S. Holder of such notes did not elect to include market discount in income as it accrued and thus, under the market discount rules, was required to defer all or a portion of any deductions for interest on debt incurred or maintained to purchase or carry its existing notes, such deferred amounts would become deductible at the time of the exchange, up to the amount of gain that the U.S. Holder recognizes in the exchange.

2. Payment of Accrued Interest

In general, to the extent that any consideration received pursuant to the Plan by a Holder of a Claim is received in satisfaction of accrued interest or OID during its holding period, such amount will be taxable to the Holder as interest income (if not previously included in the Holder's gross income). Conversely, a Holder generally recognizes a deductible loss to the extent any accrued interest claimed or amortized OID was previously included in its gross income and is not paid in full. However, the IRS has privately ruled that a

holder of a security of a corporate issuer, in an otherwise tax-free exchange, could not claim a current deduction with respect to any unpaid OID. Accordingly it is also unclear whether, by analogy, a Holder of a Claim that does not constitute a security would be required to recognize a capital loss, rather than an ordinary loss, with respect to previously included OID that is not paid in full.

With respect to a U.S. Holder of Claims, the Plan provides that consideration received in respect of such Claims is allocable first to the principal amount of the existing Claims (as determined for federal income tax purposes) and then, to the extent of any excess, to the remainder of the Claim, including any Claim for accrued but unpaid interest (in contrast, for example, to a pro rata allocation of the consideration received between principal and interest, or an allocation first to accrued but unpaid interest).

There is no assurance that the IRS will respect such allocations for federal income tax purposes. In fact, the payment ordering rules of the tax regulations generally require that interest is deemed paid prior to any principal. Each Holder of a Claim is urged to consult its tax advisor regarding the allocation of consideration and the deductibility of accrued but unpaid interest for federal income tax purposes.

D. U.S. Federal Income Tax Considerations for Non-U.S. Holders

The following discussion includes only certain U.S. federal income tax considerations of the Plan to Non-U.S. Holders. The discussion does not include any non-U.S. tax considerations. The rules governing the U.S. federal income tax consequences to Non-U.S. Holders are complex. Each Non-U.S. Holder should consult its own tax advisor regarding the U.S. federal, state and local and the foreign tax consequences of the consummation of the Plan to such Non-U.S. Holder.

Whether a Non-U.S. Holder realized gain or loss on the exchange and the amount of such gain or loss is determined in the same manner as set forth above in connection with U.S. Holders.

1. Gain Recognition

Any gain realized by a Non-U.S. Holder on the exchange of its Claim generally will not be subject to U.S. federal income taxation unless (i) the Non-U.S. Holder is an individual who was present in the United States for 183 days or more during the taxable year in which the consummation of the Plan occurs and certain other conditions are met, in which event such gain (net of certain U.S. source losses) generally will be subject to U.S. federal income tax at a rate of 30% (except as provided by an applicable tax treaty if such Non-U.S. Holder certifies under penalties of perjury that it is not a U.S. person, generally by providing an IRS Form W-8BEN or W-8BEN-E) or (ii) such gain is effectively connected with the conduct by such Non-U.S. Holder of a trade or business in the United States, in which event such Non-U.S. Holder generally will be subject to U.S. federal income tax on such gain in substantially the same manner as a U.S. person (except as provided by an applicable tax treaty if such Non-U.S. Holder certifies under penalties of perjury that it is not a U.S. person (generally by providing an IRS Form W-8BEN or W-8BEN-E) to the applicable withholding agent) and, if it is treated as a corporation for U.S. federal income tax purposes, may also be subject to a branch profits tax at a rate of 30% (or a lower rate if provided by an applicable tax treaty).

2. Accrued but Untaxed Interest

Payments to a Non-U.S. Holder that are attributable to accrued but untaxed interest (including payments in respect of accrued but untaxed OID) generally will not be subject to U.S. federal withholding tax, provided that:

- such payments are not effectively connected with the conduct of a trade or business in the United States by such Non-U.S. Holder;

- such Non-U.S. Holder does not own, actually or constructively, 10% or more of the total combined voting power of all classes of new common stock;
- such Non-U.S. Holder is not a controlled foreign corporation described in section 957(a) of the Code that is related to Reorganized Debtors through stock ownership;
- such Non-U.S. Holder is not a bank whose receipt of such amounts is described in section 881(a)(3)(A) of the Code; and
- such Non-U.S. Holder certifies under penalties of perjury that it is not a U.S. person (generally by providing an IRS Form W-8BEN or W- 8BEN-E) to the applicable withholding agent. U.S Treasury Regulations provide additional rules for a Claim held through one or more intermediaries or pass-through entities.

If the requirements set forth above are not satisfied with respect to interest that is not effectively connected with the conduct by a Non-U.S. Holder of a trade or business in the United States, amounts treated as payments of interest generally will be subject to U.S. federal withholding tax at a rate of 30% (except as provided by an applicable tax treaty if such Non-U.S. Holder certifies under penalties of perjury that it is not a U.S. person (generally by providing an IRS Form W-8BEN or W-8BEN-E) to the applicable withholding agent).

If a Non-U.S. Holder is engaged in the conduct of a trade or business in the United States, and if payments attributable to accrued but untaxed interest (including payments in respect of accrued but untaxed OID) in respect of a Claim are effectively connected with such trade or business, such Non-U.S. Holder generally will not be subject to U.S. federal withholding tax on such payments; provided that such Non-U.S. Holder provides the appropriate documentation (generally, IRS Form W-8ECI or successor form) to the withholding agent. Instead, such Non-U.S. Holder generally will be subject to U.S. federal income tax on such interest in substantially the same manner as a U.S. Holder (except as provided by an applicable tax treaty if such Non-U.S. Holder certifies under penalties of perjury that it is not a U.S. person (generally by providing an IRS Form W-8BEN or W- 8BEN-E) to the applicable withholding agent). In addition, if a Non-U.S. Holder is treated as a corporation for U.S. federal income tax purposes, it may also be subject to a branch profits tax at a rate of 30% (or a lower rate if provided by an applicable tax treaty) on its effectively connected income for the taxable year, subject to certain adjustments.

E. Withholding and Reporting Requirements

1. Information Withholding and Backup Withholding

Information reporting generally will apply to payments to a U.S. Holder pursuant to the Plan, unless such U.S. Holder is an entity that is exempt from information reporting and, when required, demonstrates this fact. Any such payment to a U.S. Holder that is subject to information reporting generally will also be subject to backup withholding, unless such U.S. Holder provides the appropriate documentation (generally, IRS Form W-9) to the applicable withholding agent certifying that, among other things, its taxpayer identification number is correct, or otherwise establishes an exemption.

The information reporting and backup withholding rules that apply to payments to certain U.S. Holders generally will not apply to payments to a Non-U.S. Holder if such Non-U.S. Holder certifies under penalties of perjury that it is not a U.S. person (generally by providing an IRS Form W-8BEN or W-8BEN-E) to the applicable withholding agent or otherwise establishes an exemption.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a U.S. Holder's or Non-U.S. Holder's U.S. federal income tax liability if the required information is furnished by such U.S. Holder or Non-U.S. Holder on a timely basis to the IRS.

2. FATCA

Under the Foreign Account Tax Compliance Act ("FATCA"), foreign financial institutions and certain other foreign entities must report certain information with respect to their U.S. account holders and investors or be subject to withholding at a rate of 30% on the receipt of "withholdable payments." For this purpose, "withholdable payments" are any U.S.-source payments of fixed or determinable, annual or periodical income (including dividends, if any, on shares of new common stock or payments received that are attributable to accrued but untaxed interest), as well as gross proceeds from the sale of any property of a type which can produce U.S.-source interest or dividends (which would include new common stock) that occur after December 31, 2016. FATCA withholding will apply even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding tax. Although administrative guidance and U.S. Treasury Regulations have been issued on FATCA, the exact scope and application of these rules remains unclear and potentially subject to material changes.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A CLAIM IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE RESTRUCTURING TRANSACTIONS, INCLUDING THE APPLICABILITY AND EFFECTS OF ANY STATE, LOCAL OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

F. Reservation of Rights

This tax section is subject to change (possibly substantially) based on subsequent changes to other provisions of the Plan. The Debtors and their advisors reserve the right to further modify, revise or supplement the Plan.

ARTICLE VIII.

ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the Plan is not confirmed and consummated, the Debtors' alternatives include (i) the liquidation of the Debtors under chapter 7 of the Bankruptcy Code and (ii) the preparation and presentation of an alternative plan or plans of liquidation.

A. Liquidation Under Chapter 7

If no chapter 11 plan can be confirmed, the Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code. In such event, a trustee would be elected or appointed to liquidate the assets of the Debtors. A discussion of the effect that a chapter 7 liquidation would have on recoveries of Holders of Claims and Equity Interests is set forth in Article V.C.3, entitled "Confirmation Standards," of this Disclosure Statement. The Debtors believe that liquidation under chapter 7 would result in, among other things: (1) smaller distributions being made to creditors and interest holders than those provided for in the Plan, due to, among other things, the additional administrative expenses attendant to the appointment of a trustee and the trustee's employment of financial and legal advisors and (2) additional expenses and

claims, some of which would be entitled to priority, that would be generated during the liquidation. Further, there are no assurances that the settlements embodied in the Plan that are beneficial to Holders of General Unsecured Claims would be available in a Chapter 7 liquidation. See the Debtors' Liquidation Analysis, attached to this Disclosure Statement as Exhibit C.

B. Alternative Plan

If the Plan is not confirmed, the Debtors or, assuming exclusivity is terminated or lapses, any other party in interest, may attempt to formulate a different plan of liquidation. The Debtors have concluded that the Plan represents the best alternative to protect the interests of creditors and other parties in interest.

The Debtors believe that the Plan allows Holders of Claims and Equity Interests to realize the highest recoveries under the circumstances. In a liquidation under chapter 11 of the Bankruptcy Code, a chapter 7 trustee would not need to be appointed, nor would any costs or expenses be incurred in connection with the appointment of a chapter 7 trustee and its professionals, and the assets of the Debtors could be liquidated in an orderly fashion, which could occur over a more extended period of time than in a liquidation under chapter 7. Accordingly, creditors likely would receive greater recoveries in a chapter 11 liquidation than in a chapter 7 liquidation.

ARTICLE IX MISCELLANEOUS PROVISIONS

A. Modification of Plan

Subject to the limitations contained in the Plan: (a) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; provided, however, that any pre-Confirmation Date amendments shall not materially or adversely affect the interests, rights or treatment of any Allowed Claims or Equity Interests under the Plan; and (b) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors (as applicable) may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

Objections with respect to any amendments or modifications to the Plan (as and to the extent permitted hereby) filed after the deadline for objections to the Plan, as set by the Bankruptcy Court, may be brought at the Confirmation Hearing. The Plan, and any modification or supplement thereof, may be inspected in the Office of the Clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims may obtain a copy of the Plan and any supplement or modification, if any, by contacting the Claims Agent at fminfo@donlinrecano.com or by reviewing such document on the internet at <https://www.donlinrecano.com/Clients/fm/Dockets>. The documents annexed to the Disclosure Statement or contained in any modification or supplement to the Plan or the Disclosure Statement are an integral part of the Plan and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

B. Extension of Time

For cause shown, any deadlines herein that are applicable to the Debtors or the Reorganized Debtors and which are not otherwise extendable, may be extended by the Bankruptcy Court.

C. Post-Effective Date Notice List

Because certain Entities may not desire to continue to receive notices after the Effective Date, the Plan provides for the establishment of a Post-Effective Date Notice List. Entities on such Post-Effective Date Notice List will be given certain notices and in some cases an opportunity to object to certain matters under the Plan (as described herein). Any Entity desiring to be included in the Post-Effective Date Notice List must (i) file a request to be included on the Post-Effective Date Notice List and include thereon its name, contact person, address, telephone number and facsimile number, within thirty (30) days after the Effective Date, and (ii) concurrently serve a copy of its request to be included on the Post-Effective Date Notice List on the Reorganized Debtors and their counsel. On or before sixty (60) days after the Effective Date, the Reorganized Debtors shall compile a list of all Entities on the Post-Effective Date Notice List and file such list with the Bankruptcy Court. Those parties set forth in Article XI.L of the Plan shall be included in the Post-Effective Date Notice List without the necessity of filing a request.

D. Revocation of the Plan

The Debtors reserve the right to revoke or withdraw the Plan prior to the entry of the Confirmation Order, and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan or if entry of the Confirmation Order or the Effective Date does not occur, then: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts effected by the Plan, and any document or agreement executed pursuant hereto shall be deemed null and void; and (c) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, such Debtor or any other Entity; (ii) prejudice in any manner the rights of the Debtors or any other Entity; or (iii) constitute an admission of any sort by the Debtors or any other Entity.

E. Binding Effect

On the Effective Date, the provisions of the Plan shall bind any Holder of a Claim against, or Equity Interest in, a Debtor and such Holder's respective successors and assigns, whether or not the Claim or Equity Interest of such Holder is Impaired under the Plan, whether or not such Holder has accepted the Plan and whether or not such Holder is entitled to a Distribution under the Plan.

F. Successors and Assigns

The rights, benefits and obligations of any Entity named or referred to herein shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

G. Governing Law

Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, unless otherwise stated, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the state of Alabama without giving effect to the principles of conflict of laws thereof.

H. Reservation of Rights

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Effective Date occurs. Neither the filing of the Plan, any statement or provision contained herein or the Disclosure Statement, nor the taking of any action by the Debtors or any Entity with respect to the Plan

shall be or shall be deemed to be an admission or waiver of any rights of: (a) the Debtors or other Entity with respect to the Holders of Claims or Equity Interests or other parties-in-interest; or (b) any Holder of a Claim or Equity Interest or other party-in-interest prior to the Effective Date.

I. Article 1146 Exemption

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property under the Plan shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any prohibited tax or governmental assessment and to accept for filing and recordation instruments or other documents transfers of property without the payment of any tax or governmental assessment.

J. Section 1125(e) Good Faith Compliance

Confirmation of the Plan shall act as a finding by the Bankruptcy Court that the Debtors and each of their respective representatives have acted in "good faith" under section 1125(e) of the Bankruptcy Code.

K. Further Assurances

The Debtors, the Reorganized Debtors, and all Holders of Claims receiving Distributions hereunder, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

L. Service of Documents

Any pleading, notice, or other document required or permitted to be made in accordance with the Plan upon the Debtors shall be made in writing and shall be delivered personally, by facsimile transmission, electronic mail or by first class U.S. mail, postage prepaid, as follows:

To the Debtors:

FM Coal, LLC
P.O. Box 1608
Jasper, Alabama 35502

with a copy to:

Waller Lansden Dortch & Davis, LLP
1901 Sixth Avenue North, Suite 1400
Attn: Jesse S. Vogtle, Jr., Eric T. Ray, and Paul Greenwood
Email: jesse.vogtle@wallerlaw.com, eric.ray@wallerlaw.com, and
paul.greenwood@wallerlaw.com

and

Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219
Attn: John C. Tishler and Tyler N. Layne

Email: john.tishler@wallerlaw.com and tyler.layne@wallerlaw.com

To the Reorganized Debtors:

FM Coal, LLC
P.O. Box 1608
Jasper, Alabama 35502
Attn: John McNab, General Manager

M. Filing of Additional Documents

On or before the Effective Date, the Debtors may file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

N. Severability

The provisions of the Plan shall not be severable unless the Debtors agree to such severance and such severance would constitute a permissible modification of the Plan pursuant to section 1127 of the Bankruptcy Code.

O. Entire Agreement

The Plan, and any supplements or amendments hereto, supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

P. Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the final versions of the documents contained in the Plan Supplement and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Equity Interests (regardless of whether such Claims or Equity Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors. All Claims and debts shall be as fixed, adjusted or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

**ARTICLE X.
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, to the extent legally permissible, retain exclusive jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Chapter 11 Cases, the Debtors, the Reorganized Debtors, the Estates, and the Plan until the Chapter 11 Cases are closed, including jurisdiction to issue any order necessary to administer the Debtors' Estates and enforce the terms of the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including to, without limitation:

- A. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest against the Debtors, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims;
- B. grant, deny or otherwise resolve any and all applications of Professionals or Entities retained in the Chapter 11 Cases by the Debtors or the Committee for allowance of compensation or reimbursement of expenses authorized by the Bankruptcy Code, the Plan, or order of the Bankruptcy Court, for periods ending by the Effective Date;
- C. resolve any matters related to the assumption, assignment or rejection of any executory contract or unexpired leases to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom;
- D. ensure that Distributions to Holders of Allowed Claims are accomplished under the provisions of the Plan, including by resolving any disputes regarding the Debtors' or the Reorganized Debtors' entitlement to recover assets held by third parties;
- E. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving a Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtors after the Effective Date;
- F. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and the Confirmation Order;
- G. resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Plan, the Confirmation Order, or any Entity's obligations incurred in connection with the Plan or the Confirmation Order;
- H. issue injunctions, enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Effective Date or enforcement of the Plan;
- I. enforce Article IX.A, Article IX.B, and Article IX.C of the Plan;
- J. enforce the injunctions set forth in Article IX.D of the Plan;
- K. resolve any cases, controversies, suits or disputes with respect to the releases, injunction, and other provisions contained in Article IX of the Plan, and enter such orders as may be necessary or appropriate to implement or enforce all such releases, injunctions, and other provisions of the Plan;
- L. enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked, or vacated;
- M. resolve any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document adopted in connection with the Plan or the Disclosure Statement;
- N. recover all assets of the Debtor and property of the Debtor's Estates, wherever located;
- O. hear and determine any issue arising under the Plan;

P. adjudicate any adversary proceeding or other proceeding which may be commenced against any Entity arising from, related to, or in connection with (i) any Chapter 5 Action; and (ii) claims against third parties relating to the facts and circumstances surrounding the same;

Q. hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;

R. enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);

S. resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof, or with respect to any other reserves established pursuant to the Plan and the administration thereof;

T. resolve any disputes concerning whether an Entity had sufficient notice of the Chapter 11 Case, the applicable Bar Date, the hearing on the approval of the Disclosure Statement as containing adequate information, the hearing on the confirmation of the Plan for the purpose of determining whether a Claim is waived, released, disallowed, or otherwise unenforceable hereunder, or for any other purpose;

U. hear any other matter not inconsistent with the Bankruptcy Code; and

V. enter an order and a Final Decree closing the Chapter 11 Cases.

All Creditors who have filed Claims in the Chapter 11 Cases shall be deemed to have consented to the jurisdiction of the Bankruptcy Court for the purposes of pursuit of Causes of Action by the Reorganized Debtors.

ARTICLE XI. RECOMMENDATION OF THE DEBTORS

In the opinion of the Debtors, the Plan is preferable to all other available alternatives and provides for a larger distribution to the Debtors' creditors than would otherwise result in any other scenario. Accordingly, the Debtors recommend that Holders of Claims entitled to vote on the Plan vote to accept the Plan and support confirmation of the Plan.

Dated: November 25, 2020

FM Coal, LLC on behalf of itself and all
other Debtors

/s/ Michael Costello _____
Name: Michael Costello
Title: Sole Member of FM Coal, LLC

EXHIBIT A

Plan

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:	:	Chapter 11
	:	
FM COAL, LLC, <i>et al.</i> , ¹	:	Case No. 20-02783 (TOM)
	:	
Debtors.	:	Jointly Administered
	:	

**FIRST AMENDED JOINT PLAN OF REORGANIZATION
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Counsel to the Debtors

Dated: November 25, 2020

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: FM Coal, LLC (1768); Cane Creek, LLC (3207); M. S. & R. Equipment Co., Inc. (3487); Cedar Lake Mining, Inc. (6132); Best Coal, Inc. (2487); and Xinergy of Alabama, Inc. (3009).

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INTRODUCTION¹

The Debtors hereby propose this Plan for the resolution of Claims against and Equity Interests in each of the Debtors pursuant to chapter 11 of the Bankruptcy Code. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement, including the exhibits thereto, for an overview of the Debtors' history, business, properties, results of operations, and projections for future operations and risk factors, together with a summary and analysis of the Plan. **ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS ARE ENCOURAGED TO CONSULT THE DISCLOSURE STATEMENT AND TO READ THE PLAN CAREFULLY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.** Subject to certain restrictions and requirements set forth in Section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan prior to its substantial consummation.

The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of the Bankruptcy Court. The Plan provides for the substantive consolidation of any of the Debtors' Estates and treats the Debtors as comprising a single Estate solely for the purposes of voting on the Plan, confirming the Plan, and making Distributions pursuant to the Plan with respect to Allowed Claims. Accordingly, voting on the Plan shall be conducted and counted on a consolidated basis.

NO SOLICITATION MATERIALS HAVE YET BEEN AUTHORIZED BY THE BANKRUPTCY COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THE PLAN.

ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

A. Defined Terms

Unless the context requires, the following terms shall have the following meanings when used in capitalized form in this Plan:

1. **"A&R Credit Agreement"** means that certain amended and restated credit agreement to be entered into on the Effective Date among the Reorganized Debtors, the Lenders, and the Administrative and Collateral Agent.

2. **"A&R Credit Documents"** means, collectively, the A&R Credit Agreement and any related amendments, restatements, supplements, ancillary agreements, pledges, collateral agreements, mortgages, deeds of trust, and other documents or instruments to be executed or delivered in connection with the A&R Credit Agreement, which shall be in form and substance acceptable to the Debtors, the Administrative and Collateral Agent, and the Lenders.

¹ Capitalized terms used in this Introduction have the meanings ascribed to them in Article I of the Plan.

3. “**A&R Term Loans**” means, collectively, the Lenders’ A Loan, the Lenders’ B Loan, and the Lenders’ C Loan.

4. “**Accrued Professional Compensation**” means, at any given moment, all accrued fees and expenses (including, without limitation, fees or expenses Allowed or awarded by a Final Order of the Bankruptcy Court), whether paid or unpaid, (i) for legal, financial advisory, accounting, liquidation, and other professional services, and reimbursement of expenses, of Professionals that are awardable and allowable under sections 328, 330(a), or 331 of the Bankruptcy Code and rendered prior to the Effective Date, or (ii) for which compensation and reimbursement is awardable and allowable under sections 503(b)(3) through 503(b)(6) of the Bankruptcy Code, including in connection with (a) applications for allowance of fees and expenses prepared and/or filed in accordance with the Bankruptcy Code and Bankruptcy Rules before or after the Effective Date, (b) motions seeking the enforcement of the provisions of the Plan or Confirmation Order, by all Professionals in the Chapter 11 Cases that the Bankruptcy Court has not denied by a Final Order, and (c) applications for allowance of Administrative Claims arising under sections 503(b)(2) or 503(b)(3) through 503(b)(6) of the Bankruptcy Code. Accrued Professional Compensation also includes all accrued fees and expenses of the Claims Agent as of the Effective Date. To the extent any Professional has voluntarily reduced monthly or interim or final applications for fees and expenses or the Bankruptcy Court or any higher court denies by a Final Order any amount of a Professional’s fees or expenses, then those amounts shall no longer be Accrued Professional Compensation.

5. “**Administrative and Collateral Agent**” means KeyBank National Association in its capacity as administrative agent and collateral agent under the Credit Agreement or A&R Credit Agreement (as applicable).

6. “**Administrative Claims**” means Claims that have been filed timely and properly filed before the Administrative Claims Bar Date set forth in the Confirmation Order (except as otherwise provided by a separate order of the Bankruptcy Court) for costs and expenses of administration under sections 503(b) (other than section 503(b)(9)), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors. Any fees or charges assessed against the Estates under section 1930 of chapter 123 of title 28 of the United States Code are excluded from the definition of Administrative Claims and shall be paid in accordance with Article V.K of this Plan. Notwithstanding anything to the contrary in this Plan, the filing of an Administrative Claim shall not be required in order to receive payment for any tax liability described in sections 503(b)(1)(B) and (C) in accordance with section 503(b)(1)(D) of the Bankruptcy Code.

7. “**Administrative Claims Bar Date**” means the first Business Day that is thirty (30) days after the Effective Date and is the deadline for Holders of Administrative Claims to file a request with the Bankruptcy Court for payment of an Administrative Claim in the manner indicated in Article II of this Plan. The Administrative Claims Bar Date shall not apply to Claims by Professionals or Claims that assert priority under section 503(b)(9) of the Bankruptcy Code.

8. “**Allowed**” means, with respect to any Claim against the Debtors, except as otherwise provided in this Plan:

- a. a Claim that both (i) has been scheduled by the Debtors in their Schedules as other than disputed, contingent, or unliquidated and (ii) has not been objected to on or before the Claims Objection Bar Date;
- b. a liquidated, mature and fixed Claim evidenced by a valid Proof of Claim filed in the Chapter 11 Cases by the applicable Bar Date that either (i) has not been objected to on or before the Claims Objection Bar Date or (ii) has been allowed by a Final Order of the Bankruptcy Court;
- c. a Claim that is allowed: (i) in any stipulation or written agreement with the Debtors or Reorganized Debtors (as applicable) of the amount and nature of Claim that is approved by Final Order of the Bankruptcy Court; or (ii) by any contract, instrument, or other agreement entered into or assumed in connection with this Plan;
- d. a Claim that is allowed by this Plan upon the Effective Date of the Plan; or
- e. is not a Disputed Claim.

9. “**Amended Schedules Bar Date**” means the later of (a) the General Bar Date or Governmental Bar Date (as applicable), or (b) 5:00 p.m., prevailing Central Time, on the date that is forty-five (45) days from the date on which the Debtors mail notice of the amendment to the Schedules, as established in the Bar Date Order.

10. “**Bankruptcy Administrator**” means the Bankruptcy Administrator for the Northern District of Alabama.

11. “**Bankruptcy Code**” means sections 101 *et seq.* of title 11 of the United States Code and applicable portions of titles 18 and 28 of the United States Code.

12. “**Bankruptcy Court**” means the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, having jurisdiction over the Chapter 11 Cases and, to the extent of any withdrawal of the reference made pursuant to section 157 of title 28 of the United States Code, the unit of such District Court pursuant to section 151 of title 28 of the United States Code or any other court exercising competent jurisdiction over the parties and subject matter or res.

13. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under Section 2075 of title 28 of the United States Code, and local rules and standing orders of the Bankruptcy Court, as the context may require, as may be amended from time to time.

14. “**Bar Date**” means, collectively or individually, as applicable, (i) the General Bar Date, (ii) the Governmental Bar Date, (iii) the Rejection Damages Bar Date, (iv) the Amended Schedules Bar Date, (v) the Administrative Claims Bar Date, and (vi) any other deadline established for filing a Proof of Claim or claim payment request in the Chapter 11 Cases by this Plan or a Final Order.

15. “**Bar Date Order**” means the order of the Bankruptcy Court dated October 26, 2020 [Dkt. No. 208], establishing the General Bar Date, the Governmental Bar Date, the Rejection Damages Bar Date, and the Amended Schedules Bar Date, with only those exceptions permitted thereby.

16. “**Business Day**” means any day, other than a Saturday, Sunday or “legal holiday” (as that term is defined in Bankruptcy Rule 9006(a)).

17. “**Cash**” means cash and cash equivalents in certified or immediately available U.S. funds, including, but not limited to, bank deposits, checks, and similar items.

18. “**Causes of Action**” means any and all Claims, actions, causes of action, choses in action, rights, demands, suits, liabilities, encumbrances, lawsuits, adverse consequences, debts, damages, dues, sums of money, accounts, reckonings, deficiencies, bonds, bills, disbursements, expenses, losses, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, restraints, injunctions, remedies (legal, equitable, mixed, or otherwise), rights of setoff, rights of recoupment, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and cross-claims (including those of the Debtors and/or the Estates), subordination rights, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, and whether held in a personal or representative capacity, that are or may be pending as of the Effective Date or instituted thereafter against any Entity, based in law or equity (or mixed law and equity), including under the Bankruptcy Code or any under any other federal or state statute, whether direct, indirect, derivative, or otherwise, and whether asserted or unasserted as of the Effective Date.

19. “**Chapter 5 Actions**” means any and all Claims arising under chapter 5 of the Bankruptcy Code and any and all fraudulent conveyance, voidable preference, or avoidable transfer Claims that, in any instance, could be brought under state or federal law.

20. “**Chapter 11 Cases**” means the chapter 11 cases commenced when the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court, which Chapter 11 Cases are jointly administered.

21. “**Claim**” has the meaning as defined in section 101(5) of the Bankruptcy Code.

22. “**Claims Agent**” means Donlin, Recano & Company, Inc., the Bankruptcy Court-appointed claims and noticing agent in the Chapter 11 Cases.

23. “**Claims Objection Bar Date**” means the date by which objections to Claims must be filed, which shall be one hundred eighty (180) days after the Effective Date; *provided, however*, that the Reorganized Debtors may seek extensions of this date from the Bankruptcy Court, with notice only to the Post-Effective Date Notice List.

24. “**Class**” means a category of Holders of Claims or Equity Interests as set forth in Article III in this Plan and under section 1122(a) of the Bankruptcy Code.

25. “**Committee**” means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases by the Bankruptcy Administrator.

26. “**Confirmation Date**” means the date on which the Confirmation Order is entered by the Bankruptcy Court.

27. “**Confirmation Hearing**” means the hearing before the Bankruptcy Court under section 1128 of the Bankruptcy Code at which the Debtors seek entry of the Confirmation Order, as such hearing may be adjourned or continued from time to time.

28. “**Confirmation Order**” means the order of the Bankruptcy Court (including all exhibits and schedules thereto) confirming the Plan under section 1129 of the Bankruptcy Code, which order shall be acceptable to the Debtors in their sole discretion.

29. “**Credit Agreement**” means that certain Credit Agreement, dated as of September 1, 2017 and as amended, restated, supplemented, or otherwise modified from time to time, among the Debtors, the Lenders, and KeyBank National Association, as Administrative Agent, Collateral Agent, Swing Line Lender, and Issuing Lender.

30. “**Credit Agreement Claims**” means any and all claims of the “Lenders” under the Credit Agreement.

31. “**Credit Agreement Deficiency Claims**” means the portions of the Credit Agreement Claims that are unsecured pursuant to section 506(a) of the Bankruptcy Code, which shall be Allowed for all purposes under this Plan in the amount of the Credit Agreement Claims less the Credit Agreement Secured Claims. As of the Effective Date, the Credit Agreement Deficiency Claims shall be Allowed in the amount of \$32 million.

32. “**Credit Agreement Secured Claims**” means the portion of the Credit Agreement Claims that are Secured Claims, which shall be Allowed for all purposes under this Plan. As of the Effective Date, the Credit Agreement Secured Claims shall be Allowed in the amount of \$28 million.

33. “**Creditor**” has the meaning in section 101(10) of the Bankruptcy Code.

34. “**Cure Claim**” means a monetary Claim based upon the Debtors’ defaults under any Executory Contract or Unexpired Lease at the time such contract or lease is assumed by the Debtors pursuant to section 365 of the Bankruptcy Code.

35. “**Debtor Releasing Parties**” has the meaning given to it under Article IX.C.1 of this Plan.

36. “**Debtors**” means the debtors and debtors in possession in the Chapter 11 Cases, and where applicable, the Estates thereof.

37. “**Disbursing Agent**” means the Entity empowered and authorized to make all Distributions under Article V.B of this Plan.

38. “**Disclosure Statement**” means that certain *Disclosure Statement for the First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code*, including, without limitation, all exhibits and schedules thereto, as amended, supplemented, or modified from time to time, filed contemporaneously herewith.

39. “**Disputed**” means any Claim: (a) listed on the Schedules as unliquidated, disputed, or contingent, irrespective of whether a Proof of Claim has been filed with respect to such Claim; (b) as to which the Debtors, the Reorganized Debtors, or any other party in interest, has interposed a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, or this Plan, which has not been withdrawn or determined by a Final Order; (c) any Claim filed or listed in the Schedules for which the Claim Objection Bar Date has not yet passed; or (d) otherwise disputed in accordance with applicable bankruptcy or insolvency law, provided such dispute has not been withdrawn or determined by a Final Order.

40. “**Disputed Claims Reserve**” means the reserve created and funded in compliance with Article VI.B of this Plan.

41. “**Distributions**” means the distributions of Cash or any other form of consideration to be made in accordance with the Plan.

42. “**Effective Date**” means a Business Day selected by the Debtors that is on or after the date by which all conditions precedent specified in Article VIII of this Plan have been satisfied or waived.

43. “**Entity**” has the meaning set forth in section 101(15) of the Bankruptcy Code and shall include any Person as such term is defined in section 101(41) of the Bankruptcy Code.

44. “**Equity Interest**” means any equity interest in a Debtor that existed immediately prior to the Petition Date.

45. “**Estates**” means the Debtors’ estates created under section 541 of the Bankruptcy Code upon the filing of the Chapter 11 Cases.

46. “**Exculpated Parties**” means each of (a) the Debtors; (b) the Committee and each of its members, solely in their capacities as such; (c) the Reorganized Debtors, solely if acting in a capacity as fiduciaries for the Estates; and (d) with respect to each of the foregoing entities in

clauses (a) through (c), each of their current and former affiliates, solely with respect to conduct from the Petition Date through the date on which the Chapter 11 Cases are closed while acting as a fiduciary for the Debtors' estates; and (e) with respect to each of the foregoing entities in clauses (a) through (d) and solely with respect to conduct from the Petition Date through the date on which the Chapter 11 Cases are closed while acting as a fiduciary for the Debtors' estates, such entities' current and former equity holders, subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such.

47. “**Final Cash Collateral Order**” means the *Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties, and (C) Granting Related Relief* [Dkt. No. 191].

48. “**Final Decree**” means the decree contemplated under Bankruptcy Rule 3022.

49. “**Final Order**” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified or amended, and as to which the time to file an appeal, motion for reconsideration or rehearing, or request for a stay has expired with no appeal, motion for reconsideration or rehearing, or request for a stay having been timely filed, without giving effect to any motion that may be filed under Rule 7060; *provided, however*, that the Confirmation Order shall be deemed a Final Order upon its entry unless it has been stayed.

50. “**FM**” means FM Coal, LLC.

51. “**FM Equity Interests**” means any Equity Interest held by any Entity in FM.

52. “**General Bar Date**” means November 30, 2020 at 5:00 p.m. prevailing Central Time, as established in the Bar Date Order.

53. “**General Unsecured Claims**” means Claims against any Debtor that are not Administrative Claims, Accrued Professional Compensation Claims, Priority Tax Claims, Credit Agreement Secured Claims, Other Secured Claims, Other Priority Claims, Intercompany Claims, Intercompany Equity Interests, or FM Equity Interests. For the avoidance of doubt, the Credit Agreement Deficiency Claims shall be General Unsecured Claims.

54. “**General Unsecured Creditor Distribution**” means a cash payment on the Effective Date, or as soon as practicable after a General Unsecured Claim becomes Allowed, in an amount equal to the lesser of (a) two percent (2%) of such Allowed General Unsecured Claim, and (b) the Holder of such Allowed General Unsecured Claim's Pro Rata share of \$240,000.

55. “**Governmental Bar Date**” means March 1, 2021 at 5:00 p.m. prevailing Central Time, as established in the Bar Date Order.

56. “**Holder**” means an Entity that is the legal or beneficial holder of a Claim or Equity Interest.

57. “**Impaired**” has the meaning within sections 1123(a)(4) and 1124 of the Bankruptcy Code, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests.

58. “**Insurance Policies**” includes any policy of insurance coverage of any kind (including any and all amendments, endorsements, renewals, and extensions thereof) that at any time belonged or belongs to or included or includes a Debtor as a named insured, additional insured, beneficiary, or assignee, including, without limitation, any director and/or officer liability insurance policy.

59. “**Intercompany Claims**” means any pre- or postpetition Claim against a Debtor held by another Debtor.

60. “**Intercompany Equity Interests**” means any Equity Interest held by any of the Debtors in any other Debtor.

61. “**Lenders**” means KeyBank National Association, Caterpillar Financial Services Corporation, and Sumitomo Mitsui Banking Corporation, each in their capacity as a lender under the Credit Agreement or A&R Credit Agreement (as applicable).

62. “**Lenders’ A Loan**” means a term loan under the A&R Credit Agreement in the original principal amount of \$19 million.

63. “**Lenders’ B Loan**” means a term loan under the A&R Credit Agreement in the original principal amount of \$4 million evidencing the Debtors’ reimbursement obligations with respect to an unfunded letter of credit issued under the Credit Agreement in support of the Debtors’ reclamation surety bonds. Such letter of credit shall include an auto-renewal provision absent an Event of Default (as defined in the A&R Credit Agreement). The Lenders’ B Loan shall accrue letter of credit fees consistent with the terms of the Credit Agreement.

64. “**Lenders’ C Loan**” means a term loan under the A&R Credit Agreement in the original principal amount of \$5 million.

65. “**Lien**” has the meaning in section 101(37) of the Bankruptcy Code.

66. “**New Boards**” means collectively, the initial board of directors, members or managers, as applicable, of each Reorganized Debtor, as applicable.

67. “**New FM Units**” means the membership interests in Reorganized FM to be issued on the Effective Date.

68. “**New Organizational Documents**” means the form of certificate of formation and operating agreement of Reorganized FM.

69. “**Ordinary Course Professionals**” means any Entity retained pursuant to the *Order Authorizing the Retention and Compensation of Professionals Utilized in the Ordinary Course of Business* [Dkt. No. 207].

70. “**Other Priority Claims**” means Claims accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than Priority Tax Claims.

71. “**Other Secured Claims**” means Secured Claims other than the Credit Agreement Secured Claims.

72. “**Petition Date**” means the date on which the Debtors filed the Chapter 11 Cases.

73. “**Plan**” means this *First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code*, as described herein, including exhibits, supplements, appendices, and schedules hereto, either in its present form or as it may be altered, amended, modified or supplemented from time to time in accordance herewith, with the Bankruptcy Code, with the Bankruptcy Rules, or with any order of the Bankruptcy Court.

74. “**Plan Supplement**” means one or more supplements to the Plan containing certain schedules, documents, and/or forms of documents relevant to the implementation of the Plan, including, without limitation, (a) the New Organizational Documents of the Reorganized Debtors, (b) the identity of the members of the New Boards, (c) the A&R Credit Agreement, (d) the Schedule of Assumed Executory Contracts and Unexpired Leases with proposed Cure Claims, (e) the Schedule of Retained Causes of Action, and (f) all other schedules, documents, and/or forms of documents necessary to comply with sections 1123(a)(7) and 1129(a)(5) of the Bankruptcy Code filed by the Debtors no later than seven (7) days before the Voting Deadline.

75. “**Post-Effective Date Notice List**” means the post-Effective Date notice list established pursuant to Article XI.C below.

76. “**Priority Tax Claims**” means Claims of governmental units of the kind specified in section 507(a)(8) of the Bankruptcy Code.

77. “**Pro Rata**” means the proportion that the amount of a Claim or Equity Interest in a particular Class or Classes bears to the aggregate amount of all Claims (including Disputed Claims, but excluding disallowed Claims) or Equity Interests in such Class or Classes.

78. “**Professionals**” means (i) any Entity employed in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327, 328, or 1103 of the Bankruptcy Code (including, but not limited to, Ordinary Course Professionals), and to be compensated for services rendered prior to the Effective Date under sections 327, 328, 329, 330, or 331 of the Bankruptcy Code; and (ii) to the extent not included in the foregoing, the Claims Agent.

79. “**Proof of Claim**” means a proof of claim filed against any Debtor on or before the applicable Bar Date or as otherwise permitted by the Bankruptcy Court or agreed to by the Debtors

(as such Proof of Claim may be amended from time to time with authorization from the Bankruptcy Court or as agreed to by the Debtors).

80. “**Reinstated**” or “**Reinstatement**” means, with respect to Claims and Equity Interests, that the Claim or Equity Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

81. “**Rejection Damages Bar Date**” means the later of (a) the General Bar Date or Governmental Bar Date (as applicable), or (b) 5:00 p.m., prevailing Central Time, on the date that is thirty (30) days following entry of an order approving the rejection of any executory contract or unexpired lease of the Debtors, as established in the Bar Date Order.

82. “**Released Parties**” each of (a) the Debtors, (b) each Debtor’s current and former equity holders, subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such, (c) the Administrative Agent, (d) the Lenders, (e) with respect to each entity in clauses (c) and (d), each such entity’s current and former equity holders, subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such. For the avoidance of doubt, John McNab and Michael Jamison shall be Released Parties. Notwithstanding the foregoing, Freddy Hunt shall not be a Released Party.

83. “**Releasing Parties**” means (a) all Holders of Claims and Equity Interests that are deemed to accept the Plan; (b) all Holders of Claims and Equity Interests who vote to accept the Plan; (c) all Holders of Claims and Equity Interests that (i) abstain from voting on the Plan and who do not opt out of the releases in the Plan, (ii) vote to reject the Plan and who do not opt out of the releases in the Plan, or (iii) are deemed to reject the Plan and who do not opt out of the releases in the Plan.

84. “**Reorganized Debtors**” means, collectively, all of the Debtors that are reorganized under and pursuant to the Plan, on and after the Effective Date.

85. “**Reorganized FM**” means FM, in its capacity as a Reorganized Debtor.

86. “**Restructuring Transactions**” means one or more transactions pursuant to section 1123(a)(5) of the Bankruptcy Code to occur on the Effective Date, or as soon as reasonably practicable thereafter, that may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan, including (a) the consummation of the transactions provided for under or contemplated by this Plan; (b) the execution and delivery of appropriate agreements or other documents (including the agreements and other documents included in the Plan Supplement) containing terms that are consistent with or reasonably necessary to implement the terms of this Plan and that satisfy the requirements of applicable law; (c) the execution and delivery of appropriate instruments (including the agreements and other documents included in the Plan Supplement) of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of this Plan; and (d)

all other actions that the Debtors or Reorganized Debtors (as applicable) determine are necessary or appropriate and consistent with this Plan.

87. “*Schedule of Retained Causes of Action*” means any non-exhaustive schedule (including any amendments or modifications thereto) of Causes of Action of the Debtors to be retained by the Reorganized Debtors

88. “*Schedules*” mean the schedules of assets and liabilities, schedules of executory contracts and unexpired leases and statements of financial affairs filed by the Debtors under section 521 of the Bankruptcy Code, as may be amended, modified or supplemented from time to time.

89. “*Secured Claim*” means a Claim against the Debtors that is secured by a Lien on property in which the Estates have an interest, which Liens are valid, perfected, unavoidable and enforceable under applicable law or by reason of a Final Order, or that are subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Creditor’s interest in the Estates’ interest in such property or to the extent of the amount subject to setoff, as applicable, as determined under section 506(a) of the Bankruptcy Code.

90. “*Solicitation Procedures Order*” means any order, including the exhibits and schedules thereto, entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan and approving the Disclosure Statement.

91. “*Tax Code*” means the United States Internal Revenue Code of 1986, as amended.

92. “*Unimpaired*” means not Impaired.

93. “*Voting Deadline*” means the date and time by which Creditors entitled to vote to accept or reject the Plan must submit their ballot(s) in accordance with the terms and instructions set forth in the Solicitation Procedures Order.

94. “*Voting Record Date*” means the record date established by the Bankruptcy Court pursuant to the Solicitation Procedures Order.

B. Rules of Interpretation

For purposes of this Plan: (a) in the appropriate context, each term, whether stated in the singular or the plural, includes both the singular and the plural, and pronouns stated in the masculine, feminine or neutral gender include the masculine, feminine and the neutral gender; (b) any reference in this Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference in this Plan to an existing document or exhibit having been filed or to be filed means that document or exhibit, as it may thereafter be amended, modified or supplemented through and including the Confirmation Date, which, after they are filed, may be amended, modified, or supplemented only with the express written consent of the Debtors; (d) unless otherwise specified, all references in this Plan to “Articles” are references to Articles hereof or hereto; (e) the words

“herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) all exhibits and/or supplements to the Plan are incorporated herein, regardless of when those exhibits are filed; (h) except as expressly set forth in the Plan, to the extent any discrepancy exists between the description herein of a document or agreement that is an exhibit to the Plan and with the provisions of that exhibit, the actual agreement or document shall govern; (i) the words “includes” and “including” are not limiting; (j) any reference to an Entity as Holder includes that Entity’s successors and assigns; (k) any immaterial effectuating provisions may be interpreted by the Debtors in a manner that is consistent with the overall purpose and intent of the Plan, all without further order of the Bankruptcy Court; (l) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (m) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules has the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (m) the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed hereby; (n) whenever a distribution of property is required to be made on a particular date, the distribution shall be made on such date, or as soon as practicable thereafter; and (o) all references in this Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

ARTICLE II. ADMINISTRATIVE AND PRIORITY CLAIMS

Certain types of Claims are not placed into Classes; instead, such Claims are unclassified Claims. Such unclassified Claims are not considered Impaired, and their Holders are not entitled to vote on the Plan because they automatically receive specific treatment provided for them in the Bankruptcy Code. As such, the Debtors did not place the following Claims in any Class. The respective treatment for these Claims is provided below.

A. Establishment of Administrative Claims Bar Date

1. Except as otherwise provided in the Plan or another order of the Bankruptcy Court, any Entity that seeks allowance of an Administrative Claim shall file with the Bankruptcy Court and serve on counsel for the Debtors or the Reorganized Debtors (as applicable) a request for payment of such Administrative Claim by 5:00 p.m., prevailing Central time, on the Administrative Claims Bar Date. Requests for payment of an Administrative Claim must include at a minimum: (a) the name of the Holder seeking allowance of an Administrative Claim; (b) the amount of the Administrative Claim sought; (c) the basis asserted for allowance of the Administrative Claim; and (d) all supporting documentation that justifies allowance of the Administrative Claim asserted. Any Entity that is required to file and serve a request for allowance of an Administrative Claim by the Administrative Claims Bar Date that fails to file and serve a timely request will be forever barred, estopped, and enjoined from asserting any request for allowance of such Administrative Claim or participating in Distributions under the Plan on account thereof.

2. A request for payment of an Administrative Claim consistent with the foregoing paragraph will be considered timely filed only if it is filed with the Bankruptcy Court and actually

received by parties identified in Article II.A.1 of this Plan by 5:00 p.m., prevailing Central time, on the Administrative Claims Bar Date. Requests for payment of Administrative Claims may not be delivered by facsimile, telecopy, or electronic mail transmission. The Administrative Claims Bar Date shall not apply to (a) Claims for Accrued Professional Compensation, or (b) Allowed Administrative Claims that arise in the ordinary course of the Debtors' business, including Administrative Claims arising from or with respect to the sale of goods or services on or after the Petition Date, executory contracts and unexpired leases, and all Administrative Claims that are Intercompany Claims, shall be paid or otherwise satisfied in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to, such transactions without further action by the Holders of such Administrative Claims or further approval by the Bankruptcy Court.

3. Notwithstanding anything to the contrary in this Plan, the Debtors' and the Committee's Professionals shall not be required to file a request for payment of any Administrative Claim by the Administrative Claims Bar Date for fees and expenses allowable under sections 330, 331, or 503(b)(2-6) of the Bankruptcy Code, because Professionals will instead file final fee applications as required by the Article II.C of this Plan, the Bankruptcy Code, the Bankruptcy Rules, and the Confirmation Order.

B. Administrative Claims

In full and final satisfaction, settlement, release, and discharge of each Allowed Administrative Claim, except to the extent that a Holder of an Allowed Administrative Claim and the Debtors or the Reorganized Debtors (as applicable) agree in writing to less favorable treatment for such Administrative Claim, the Debtors or Reorganized Debtors (as applicable) shall pay in Cash, from the assets of the Debtors' Estates, each Holder of an Allowed Administrative Claim any unpaid amount of that Allowed Administrative Claim as follows: (a) on the Effective Date or as soon as practicable thereafter (or, if not then due, when such Allowed Administrative Claim becomes due or as soon as practicable thereafter); (b) if such Claim is Allowed after the Effective Date, on the date the Claim is Allowed or as soon as practicable after it is Allowed (or, if not then due, when such Allowed Administrative Claim becomes due, or as soon as reasonably practicable); (c) when and upon such terms as may be agreed upon by the Holder of the Allowed Administrative Claim and the Debtors or Reorganized Debtors (as applicable); or (d) in accordance with any Final Order of the Bankruptcy Court, as applicable.

C. Professional Compensation and Reimbursement Claims

The deadline for Professionals to submit final applications for approval of Accrued Professional Compensation to the Bankruptcy Court shall be sixty (60) days after the Effective Date. Any Professional or other Entity that is required to file and serve a final application for approval of Accrued Professional Compensation that fails to file and serve a timely application will be forever barred, estopped, and enjoined from asserting any request for payment of Accrued Professional Compensation or participating in Distributions under the Plan on account thereof.

All Professionals employed by the Debtors or the Committee (including Ordinary Course Professionals) shall provide to the Debtors an estimate of their paid and unpaid Accrued Professional Compensation through the Effective Date (including an estimate for fees and

expenses expected to be incurred after the Effective Date to prepare and prosecute allowance of final fee applications) no later than five (5) days prior to the Confirmation Hearing. Thereafter, but in any event no later than the Effective Date, the Debtors shall fully fund an escrow account to provide for the payment of Accrued Professional Compensation.

Except as otherwise specifically provided in the Plan, on and after the Effective Date, the Reorganized Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented fees and expenses of the Professionals on or after the Effective Date, in each case, related to implementation and consummation of the Plan. Upon the Effective Date, any requirement that Professionals comply with Sections 327 through 331 and 1103 of the Bankruptcy Code or any order of the Bankruptcy Court entered before the Effective Date governing the retention of, or compensation for services rendered by, Professionals after the Effective Date shall terminate, and the Reorganized Debtors may employ or pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

D. Priority Tax Claims

In full and final satisfaction, settlement, release, and discharge of each Allowed Priority Tax Claim, except to the extent that a Holder of an Allowed Priority Tax Claim and the Debtors or the Reorganized Debtors (as applicable) agree in writing to less favorable treatment for such Priority Tax Claim, the Debtors or the Reorganized Debtors (as applicable) shall pay in Cash, from the assets of the Debtors' Estates, each Holder of an Allowed Priority Tax Claim any unpaid amount of that Allowed Priority Tax Claim as follows: (a) on the Effective Date or as soon as practicable thereafter; (b) if such Claim is Allowed after the Effective Date, on the date the Claim is Allowed or as soon as practicable after it is Allowed; (c) through equal annual installment payments in Cash, of a total value, as of the Effective Date, equal to the Allowed amount of such Claim, over a period ending not later than five (5) years after the Petition Date; (d) when and upon such terms as may be agreed upon by the Holder of the Allowed Priority Tax Claim and the Debtors or Reorganized Debtors (as applicable); or (d) in accordance with any Final Order of the Bankruptcy Court, as applicable.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. Summary

1. Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and controversies resolved pursuant to the Plan. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Equity Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise and settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Equity Interests and is fair, equitable, and is within the range of reasonableness. All distributions made to Holders of Allowed Claims and Allowed Equity Interests in any Class are intended to be and shall be final.

2. Except for the Claims addressed in Article II of this Plan, all Claims and Equity Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or an Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and the remainder is classified in one or more other Classes to the extent that any portion of the Claim or Equity Interest qualifies within the description of such other Classes, without duplication. A Claim or an Equity Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date. Further, the provision in this Plan for a Class of Claims or Equity Interests does not presume, and does not constitute any admission or determination regarding, the existence or validity of any Claim (including any purported Secured Claims) or Equity Interest within such Class.

3. This Plan is intended to deal with all Claims against and Equity Interests in the Debtors of whatever character, whether known or unknown, whether or not with recourse, whether or not contingent or unliquidated, and whether or not previously Allowed by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code, including unclassified Claims. However, only Holders of Allowed Claims and Equity Interests will receive any distribution under this Plan, and no Holder of a Claim or Equity Interest shall receive any distribution unless and until such Claim or Equity Interest is Allowed. For purposes of determining Pro Rata distributions under this Plan, Disputed Claims shall be included in the Class in which such Claims would be included if Allowed, until such Claims are finally disallowed. This Plan will not provide any distributions on account of a Claim or Equity Interest to the extent that such Claim or Equity Interest has been disallowed, released, withdrawn, waived, or otherwise satisfied or paid as of the Effective Date.

4. In accordance with section 1123(a)(1) of the Bankruptcy Code, as set forth above, the Debtors have not classified Administrative Claims, Accrued Professional Compensation Claims, or Priority Tax Claims, and the Plan describes their treatment under this Plan in Article II.

5. The following table classifies Claims against and Equity Interests in the Debtors for all purposes, including voting, confirmation, and Distribution under this Plan and in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code, unless a Final Order provides otherwise. Each Class set forth below is treated under this Plan as a distinct Class for voting and Distribution purposes.

6. As set forth in the following table, Classes 3 – 5 and 7 are Impaired under the Plan. The treatment of Allowed Claims and Equity Interests in the Impaired Classes under this Plan is in full and complete satisfaction of the legal, contractual, and equitable rights of each Holder of an Allowed Claim or Equity Interest in each such Impaired Class. Subject to the provisions of the Solicitation Procedures Order, Holders of Claims in the Impaired Classes 3 – 4 are entitled to vote on the Plan. Because Holders of Claims and Equity Interests in Classes 5 and 7 will not receive any distribution under the Plan, they are conclusively presumed to have rejected the Plan, and are not entitled to vote. Holders in Claims in Classes 1 – 2 and 6 are Unimpaired, deemed to accept the Plan, and not entitled to vote on the Plan.

B. Classification and Treatment of Claims and Equity Interests

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Rights</u>
1	Other Secured Claims	Unimpaired	Deemed to Accept
2	Other Priority Claims	Unimpaired	Deemed to Accept
3	Credit Agreement Secured Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Intercompany Claims	Impaired	Deemed to Reject
6	Intercompany Equity Interests	Unimpaired	Deemed to Accept
7	FM Equity Interests	Impaired	Deemed to Reject

1. Other Secured Claims (Class 1)

(a) **Classification:** Class 1 consists of Other Secured Claims.

(b) **Treatment:** Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive the following, at the Debtors' option:

(i) payment in full in Cash equal to the amount of such Allowed Other Secured Claim;

(ii) the collateral securing its Allowed Other Secured Claim and payment of any interest required under section 506(b) of the Bankruptcy Code;

(iii) Reinstatement of such Allowed Other Secured Claim; or

(iv) such other treatment rendering such Allowed Other Secured Claim Unimpaired.

(c) **Voting:** Class 1 is Unimpaired, and, therefore, Holders of Other Secured Claims in Class 1 are deemed to accept and not entitled to vote to accept or reject the Plan.

2. Other Priority Claims (Class 2)

(a) **Classification:** Class 2 consists of Other Priority Claims.

(b) **Treatment:** In full and final satisfaction, settlement, release, and discharge of each Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim, on or as soon as practicable after the later of the Effective Date or the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, will either be paid the full amount of such Holder's Allowed Other Priority Claim, or such lesser amount as the

Debtors or the Reorganized Debtors (as applicable) and the Holder of the Other Priority Claim may agree to in writing, in Cash.

(c) **Voting:** Class 2 is Unimpaired, and, therefore, Holders of Other Priority Claims in Class 2 are deemed to accept and not entitled to vote to accept or reject the Plan.

3. Credit Agreement Secured Claims (Class 3)

(a) **Classification:** Class 3 consists of Credit Agreement Secured Claims.

(b) **Treatment:** On the Effective Date, Holders of Allowed Credit Agreement Secured Claims will become bound by the A&R Credit Documents and receive, in full and final satisfaction, settlement, release, and discharge of each Allowed Credit Agreement Secured Claim, their Pro Rata share of each of the A&R Term Loans. On the Effective Date, except as set forth in Article IV.F hereof, the Credit Agreement shall be deemed replaced by the A&R Credit Agreement, without the need for any Holder of an Allowed Credit Agreement Secured Claim that does not vote for the Plan or votes to reject the Plan to execute the A&R Credit Documents, including, without limitation, the A&R Credit Agreement, and each Lien and security interest that secures obligations arising under the Credit Agreement shall be reaffirmed, ratified, and deemed granted by each Reorganized Debtor to secure all obligations of the Reorganized Debtors arising under the A&R Credit Agreement.

(c) **Voting:** Class 3 is Impaired, and, therefore, Holders of Credit Agreement Secured Claims in Class 3 are entitled to vote to accept or reject the Plan.

4. General Unsecured Claims (Class 4)

(a) **Classification:** Class 4 consists of General Unsecured Claims.

(b) **Treatment:** Each Holder of an Allowed General Unsecured Claim not otherwise paid during the pendency of the Chapter 11 Cases (other than any Holder of a Credit Agreement Deficiency Claim) shall receive its Pro Rata share of the General Unsecured Creditor Distribution.

(c) **Voting:** Class 4 is Impaired and, therefore, Holders of General Unsecured Claims in Class 4 are entitled to vote to accept or reject the Plan.

5. Intercompany Claims (Class 5)

(a) **Classification:** Class 5 consists of Intercompany Claims.

(b) **Treatment:** On the Effective Date or as soon thereafter as is practicable, Intercompany Claims may be extinguished or compromised by distribution, contribution, or otherwise Reinstated, at the sole option of the Debtors or the Reorganized Debtors (as applicable) on or after the Effective Date.

(c) **Voting:** Class 5 is Impaired. Because the Holders of Intercompany Claims are not expected to receive any distributions under this Plan, such Holders of Intercompany Claims are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Intercompany Claims.

6. Intercompany Equity Interests (Class 6)

(a) **Classification:** Class 6 consists of Intercompany Equity Interests.

(b) **Treatment:** On the Effective Date, all Intercompany Equity Interests shall remain effective, outstanding, and be Reinstated and shall be owned and held, directly or indirectly, by Reorganized FM.

(c) **Voting:** Class 6 is Unimpaired and, therefore, Holders of Intercompany Equity Interests in Class 6 are deemed to accept and not entitled to vote to accept or reject the Plan.

7. FM Equity Interests (Class 7)

(a) **Classification:** Class 7 consists of FM Equity Interests.

(b) **Treatment:** On the Effective Date, all FM Equity Interests shall be deemed cancelled, released, discharged, and extinguished without further action by the Debtors or Reorganized Debtors.

(c) **Voting:** Class 7 is Impaired. Holders of Equity Interests in Class 7 are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of FM Equity Interests are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such FM Equity Interests.

C. Objections and Defenses

Except as otherwise provided in the Plan or prior order of the Bankruptcy Court, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' (as applicable) rights with respect to any Claim, including, without limitation, all rights in respect of Causes of Action, or legal or equitable defenses to, or setoffs or recoupments against any Claim.

Further, except as otherwise provided in the Plan or prior order of the Bankruptcy Court, the failure of any party to object to any Claim in the Chapter 11 Cases prior to the Effective Date shall be without prejudice to the rights of the Reorganized Debtors to contest, object to, or otherwise defend against such Claim if and when such Claim is sought to be enforced by the Holder of such Claim. Procedures for objections to Claims are set forth in Article VI of this Plan.

D. Release of Liens

Any and all Liens securing any Secured Claim that is not an Allowed Claim shall be released, shall be deemed null and void, and shall be unenforceable for all purposes. Nothing in this Plan shall preclude the Debtors or the Reorganized Debtors (as applicable) from challenging the validity of any alleged Lien on any asset of any Debtor or the value of the property that secures any alleged Lien, and all such rights are expressly preserved. By way of further clarification, the rights to surcharge the collateral securing the Credit Agreement Secured Claims has been waived to the extent and subject to the exceptions set forth in paragraph 22 of the Final Cash Collateral Order.

E. Surcharge Under Section 506(c) of the Bankruptcy Code

Except as otherwise set forth in this Plan or any prior order of the Bankruptcy Court, all rights of Holders of Secured Claims under this Plan are subject to the rights of the Debtors or the Reorganized Debtors (as applicable) to surcharge the applicable collateral pursuant to section 506(c) of the Bankruptcy Code, which rights are expressly preserved.

F. Estimation of Claims

Before or after the Effective Date, the Debtors or the Reorganized Debtors (as applicable) may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the claims register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim that is disputed, contingent, or unliquidated, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan, including for purposes of distributions. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such holder has filed a motion requesting the right to seek such reconsideration on or before twenty one (21) days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

G. Distribution Cap

In no event shall any Holder of an Allowed Claim receive a distribution of a value exceeding one hundred percent (100%) of the amount of such Holder's Allowed Claim.

H. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' (as applicable) rights with respect to any Unimpaired Claim, including, without limitation, all rights in respect of Causes of Action, or legal or equitable defenses to or setoffs or recoupments against any Unimpaired Claim.

I. Elimination of Vacant Classes

Any Class of Claims that does not have a holder of an Allowed Claim, or a Claim temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing, shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

J. Presumed Acceptance by Voting Classes That Do Not Vote

If a Class contains Claims eligible to vote on the Plan and no holder of a Claim in such Class eligible to vote on the Plan votes to accept or reject the Plan, the Plan shall be presumed accepted by the Class.

K. Nonconsensual Confirmation

If any Impaired Class of Claims entitled to vote does not vote to accept the Plan, the Debtors reserve the right to amend the Plan, to undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code, or both. With respect to Impaired Classes that are deemed to reject the Plan, the Debtors intend to request that the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code notwithstanding the deemed rejection of the Plan by those Classes.

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THE PLAN

A. Substantive Consolidation for Voting and Distribution Purposes

Except as otherwise provided in this Plan, the Plan treats the Debtors as comprising a single Estate solely for the purposes of voting on the Plan, confirming the Plan, and making Distributions pursuant to the Plan with respect to Allowed Claims. Accordingly, voting on the Plan shall be conducted and counted on a consolidated basis.

On the Effective Date, (a) the assets of the Debtors and their Estates will be merged and/or treated as if they are merged into a consolidated Estate for the purpose of making distributions on account of Allowed Claims against the Debtors and their Estates; (b) any Claim filed or asserted against any of the Debtors will be deemed a Claim against the consolidated Estate (and any duplication of claims arising from both primary operative documents and guaranty and/or other secondary obligations, or other Claims for which more than one Debtor may be liable, shall be eliminated and all such Claims against the Debtors shall be treated as a single Claim that eliminates

such duplications); (c) any obligation of any of the Debtors or their Estates will be deemed to be an obligation of the consolidated Estate; (d) all guarantees by one of the Debtors in favor of any of the other Debtors shall be eliminated, (e) all guarantees executed by any of the Debtors in favor of any Creditor shall be deemed to be a single obligation, and (f) any and all Intercompany Claims shall be eliminated and not entitled to any distribution under the Plan. For the avoidance of doubt, Holders of Allowed Claims or Allowed Equity Interests who assert identical Claims against or Equity Interests in multiple Debtors shall be entitled to only a single satisfaction of such Claims or Equity Interests.

This substantive consolidation shall not (i) affect any Debtor's status as a separate and independent legal entity; (ii) affect the Debtors' organizational structure; (iii) constitute a change of control of any Debtor for any purpose; (iv) cause a merger or consolidation of any legal entities; (v) cause a transfer of any Debtor or Estate assets; (vi) affect any valid, enforceable, and unavoidable Liens (other than any Liens that secure any Claims eliminated as a result of the substantive consolidation and any Liens against any collateral that cease to exist as a result of the substantive consolidation); (vii) cause any Lien to attach to any property of any Debtor or Estate to which such Lien would not attach in the absence of the substantive consolidation provided for in this Article (*e.g.*, holders of floating Liens on particular classes of property shall not attach to property of a Debtor that did not secure such Claim on the Effective Date); (viii) create new collateral with respect to any Lien, charge, or other encumbrance securing the payment or performance of any Claim; (ix) make any Debtor or Estate assets or proceeds thereof available for the satisfaction of any Secured Claim that would not be available for the satisfaction of such Secured Claim in the absence of the substantive consolidation provided for in this Article; (x) create any Claim in a Class different from the Class in which such Claim would have been placed in the absence of this substantive consolidation; (xi) change the priority or nature of any Claim; (xii) affect any Debtor's independent ownership of any assets for any purposes other than the substantive consolidation described herein; or (xiii) result in the substantive consolidation of the Debtors. Except as otherwise expressly provided by or permitted in the Plan, all Debtors shall continue to exist as separate and independent legal entities.

The treatment set forth in this Article shall not (a) affect any Cause of Action available to any Debtor or Estate, including Chapter 5 Actions (except with respect to Intercompany Claims) or the ability of the Debtors or Reorganized Debtors (as applicable) to pursue such Causes of Action or object to Claims, and all such Causes of Action and rights of objection are preserved as they existed immediately before the Effective Date for the Debtors or Reorganized Debtors (as applicable) to pursue; (b) constitute any admission by any Debtor, Reorganized Debtor, or Estate with respect to any Cause of Action or right of objection; (c) have any estoppel effect with respect to any Cause of Action or right of objection; or (d) constitute or affect admissible evidence in connection with any litigation of any Cause of Action or objection. The treatment described in this Article serves only as a mechanism to effect a fair distribution of value to the Holders of Allowed Claims.

B. Restructuring Transactions

On the Effective Date or as soon as reasonably practicable thereafter, the Debtors or Reorganized Debtors (as applicable) may take all actions consistent with this Plan as may be

necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Restructuring Transactions under and in connection with this Plan.

On or after the Effective Date, without prejudice to the rights of any party to a contract or other agreement with any Reorganized Debtor, each Reorganized Debtor may, in its sole discretion, take such action as permitted by applicable law, and such Reorganized Debtor's organizational documents, as such Reorganized Debtor may determine is reasonable and appropriate, including, without limitation, causing: (i) a Reorganized Debtor to be merged into another Reorganized Debtor or an affiliate of a Reorganized Debtor; (ii) a Reorganized Debtor to be dissolved; (iii) the legal name of a Reorganized Debtor to be changed; or (iv) the closure of a Reorganized Debtor's Chapter 11 Case on the Effective Date or any time thereafter. None of the transactions contemplated in this Article IV.B shall constitute a change of control under any agreement, contract, or document of the Debtors.

On the Effective Date or as soon thereafter as is reasonably practicable, the Reorganized Debtors may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, or necessary or appropriate to effectuate this Plan, including, without limitation: (i) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of this Plan and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of this Plan and having other terms to which the applicable parties agree; (iii) the filing of appropriate certificates or articles of incorporation and amendments thereto, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable law; (iv) the Restructuring Transactions; and (v) all other actions that the applicable entities determine to be necessary or appropriate, including, without limitation, making filings or recordings that may be required by applicable law.

On the Effective Date, all of the Debtors' membership interests in the Alabama Coal Cooperative shall be deemed held by one of the Reorganized Debtors, as will be disclosed in the Plan Supplement.

C. Sources of Consideration for Distributions under the Plan

All Distributions shall be funded by existing Cash on hand with the Debtors and their Estates as of the Effective Date or the assets of the Reorganized Debtors.

D. Vesting of Assets

Except as otherwise provided in the Plan, any agreement, instrument or other document incorporated in the Plan or the Plan Supplement, or pursuant to a Final Order of the Bankruptcy Court, on the Effective Date, all property in each Estate, all Causes of Action and any property acquired by any of the Debtors pursuant to the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances. On and after the Effective Date, except as otherwise provided in the Plan or the Confirmation Order, each

Reorganized Debtor may operate its business and may use, acquire or dispose of property and compromise or settle any Claims, Equity Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur on or after the Effective Date for professional fees, disbursements, expenses, or related support services without application to the Bankruptcy Court. Notwithstanding the foregoing, the escrow provided for in Article II.C of this Plan shall not vest in any of the Reorganized Debtors; *provided, however*, when all Claims for Accrued Professional Compensation owing to Professionals have been resolved, any remaining amount in such escrow shall promptly be paid to the Reorganized Debtors without any further action or order of the Bankruptcy Court.

E. Continued Corporate Existence

Except as otherwise provided in the Plan, any agreement, instrument or other document incorporated in the Plan or the Plan Supplement, or as a result of any Restructuring Transactions, on the Effective Date, each Debtor shall continue to exist after the Effective Date as a separate corporation or other form of Entity under governing state or foreign law, as the case may be, with all the powers of such corporation or other form of Entity, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of formation and operating agreement (or other analogous formation documents) in effect before the Effective Date, except to the extent such certificate of formation and operating agreement (or other analogous formation documents) are amended by the Plan or otherwise, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable law).

F. Cancellation of Existing Securities and Agreements

Except for purposes of evidencing a right to Distributions under the Plan and with respect to the A&R Credit Documents as provided under the Plan, on the Effective Date, all agreements and other documents evidencing Claims or rights of any Holder of a Claim or Equity Interest against any of the Debtors, including, but not limited to, all indentures, notes, bonds, and share certificates evidencing such Claims and Equity Interests and any agreements or guarantees related thereto shall be cancelled, terminated, deemed null and void and satisfied, as against the Debtors, but not as against any other Entity unless specifically released by or under the Plan.

G. Governing Bodies

The composition of the New Boards shall be disclosed in the Plan Supplement. The members of the applicable governing body of each Debtor prior to the Effective Date, in their capacities as such, shall be deemed to have resigned or shall otherwise cease to serve as a member of the applicable governing body of the applicable Debtor on the Effective Date.

H. Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, transfer tax, sale or use tax, mortgage recording tax or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents pursuant to such transfers of property without the payment of any such tax, recordation fee or governmental assessment. Such exemption under section 1146(a) of the Bankruptcy Code specifically applies, without limitation, to: (1) the creation and recording of any mortgage, deed of trust, Lien or other security interest; (2) the making or assignment of any lease or sublease; (3) any Restructuring Transaction; (4) the issuance, distribution and/or sale of any securities or Equity Interests of the Debtors or the Reorganized Debtors; and (5) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including (a) any merger agreements, (b) agreements of consolidation, restructuring, disposition, liquidation or dissolution, (c) deeds, (d) bills of sale, or (e) instruments of transfer or assignment executed in connection with any Restructuring Transaction occurring under the Plan.

I. Exemption from Securities Laws

The issuance of and the distribution under this Plan of the New FM Units shall be exempt from registration under the Securities Act and any other applicable securities laws pursuant to section 1145 of the Bankruptcy Code. The New FM Units may be resold without registration under the Securities Act or other federal securities laws pursuant to the exemption provided by section 4(a)(1) of the Securities Act, unless the holder is an “underwriter” with respect to such New FM Units, as that term is defined in section 1145(b) of the Bankruptcy Code. In addition, such section 1145 exempt New FM Units generally may be resold without registration under state securities laws pursuant to various exemptions provided by the respective laws of the several states.

J. Operations of the Debtors Between the Confirmation Date and the Effective Date

The Debtors shall continue to operate as debtors in possession during the period from the Confirmation Date through and until the Effective Date. The retention and employment of the Professionals retained by the Debtors shall terminate as of the Effective Date; *provided, however*, that the Debtors shall exist, and their Professionals shall be retained, after such date with respect to applications filed under sections 330 and 331 of the Bankruptcy Code.

K. Automatic Stay

The automatic stay provided for under section 362 of the Bankruptcy Code shall remain in effect in the Chapter 11 Cases until the Effective Date at which time the injunctions described in this Plan shall come into effect with no gap in time.

L. The Committee

Upon the Effective Date, the Committee shall be deemed dissolved, and their members shall be deemed released and discharged from all further authority, duties, responsibilities, and obligations relating to and arising from or in connection with the Chapter 11 Cases. The retention and employment of the Professionals retained by the Committee shall be deemed terminated as of the Effective Date; *provided, however*, that the Committee shall continue to exist, and their Professionals shall continue to be retained, after such date with respect to applications filed under sections 330 and 331 of the Bankruptcy Code and, as appropriate, motions seeking the enforcement of the provisions of the Plan or the Confirmation Order.

M. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, unless expressly stated otherwise in the Plan, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action (including, without limitation, any Causes of Action identified in the Schedule of Retained Causes of Action and any Chapter 5 Actions), whether arising before or after the Petition Date, and such rights to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such Causes of Action in accordance with the best interests of the Reorganized Debtors, and the Reorganized Debtors, through their authorized agents or representatives, shall retain and have the exclusive right, authority and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw or litigate to judgment any such Causes of Action, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order or approval of the Bankruptcy Court. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Causes of Action against it as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against it. The Debtors or the Reorganized Debtors (as applicable) expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Bankruptcy Court order, the Debtors or Reorganized Debtors (as applicable) expressly reserve all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Causes of Action upon, after or as a consequence of the confirmation or consummation of the Plan.

N. A&R Credit Documents

On the Effective Date, the A&R Credit Documents shall be executed and delivered, and the Reorganized Debtors shall be authorized to execute, deliver and enter into, the A&R Credit Agreement and the other A&R Credit Documents, without the need for any further corporate action and without further action by the Holders of Claims or Equity Interests.

All Liens and security interests granted and continuing pursuant to the A&R Credit Documents shall be (i) valid, binding, perfected, and enforceable Liens and security interests in

the personal and real property described in and subject to such document, with the priorities established in respect thereof under applicable law, (ii) granted in good faith and deemed not to constitute a fraudulent conveyance or fraudulent transfer, and (iii) not otherwise subject to avoidance, recharacterization, or subordination (whether equitable, contractual or otherwise) under any applicable law. The Debtors, the Reorganized Debtors, and the Entities granted such Liens and security interests are authorized to make all filings and recordings and to obtain all governmental approvals and consents necessary to establish, attach, and perfect such Liens and security interests under any applicable law and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interest to third parties.

O. Authorization, Issuance, and Delivery of New FM Units

On the Effective Date, the Debtors are authorized to issue or cause to be issued and shall issue the New FM Units without the need for any further corporate or shareholder action. Fifty-one percent (51%) of the New FM Units will be issued to John McNab, and forty-nine percent (49%) of the New FM Units will be issued to Michael Jamison.

**ARTICLE V.
PROVISIONS GOVERNING DISTRIBUTIONS**

A. Distribution Dates

Distributions to Holders of Claims shall be made as provided in Articles II and III of the Plan. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

B. Disbursing Agents

1. All Distributions under the Plan shall be made by the Reorganized Debtors as Disbursing Agent or such other entity designated by the Reorganized Debtors as Disbursing Agent.

2. The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform their duties under the Plan, (b) make all Distributions contemplated by the Plan, (c) employ professionals to represent them with respect to their responsibilities, and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, this Plan, or deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

3. The Disbursing Agent shall only be required to act and make Distributions in accordance with the terms of the Plan and shall have no (a) liability for actions taken in accordance with the Plan or in reliance upon information provided to them in accordance with the Plan or (b) obligation or liability for Distributions under the Plan to any party who does not hold an Allowed Claim at the time of Distribution or who does not otherwise comply with the terms of the Plan.

4. Except as otherwise ordered by the Bankruptcy Court, any reasonable fees and expenses incurred by the Disbursing Agent (including, without limitation, reasonable attorneys' fees and expenses) on or after the Effective Date shall be paid in Cash by the Reorganized Debtors in the ordinary course of business.

C. Record Date for Distributions

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred under Bankruptcy Rule 3001 on or prior to the Voting Record Date will be treated as the Holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the Voting Record Date. The Debtors or Reorganized Debtors (as applicable) shall have no obligation to recognize any transfer of any Claim occurring after the Voting Record Date. In making any Distribution with respect to any Claim, the Reorganized Debtors shall, in the Reorganized Debtors' sole discretion, be entitled instead to recognize and deal with, for all purposes hereunder, only the Entity that is listed on the Proof of Claim filed with respect thereto or identified on the Schedules as the Holder thereof as of the close of business on the Voting Record Date and upon such other evidence or record of transfer or assignment that was known to the Debtors or Reorganized Debtors (as applicable) as of the Voting Record Date and is available to the Reorganized Debtors.

D. Delivery of Distributions

Subject to Bankruptcy Rule 9010 and except as otherwise provided in this Plan, Distributions to the Holders of Allowed Claims shall be made by the Disbursing Agent at (a) the address of each Holder as set forth in the Schedules, unless superseded by the address set forth on Proofs of Claim filed by such Holder, or (b) the last known address of such Holder if no Proof of Claim is filed or if the Debtors or Reorganized Debtors (as applicable) have been notified in writing of a change of address.

E. Undeliverable and Unclaimed Distributions

In the event that any Distribution to any Holder of an Allowed Claim made by the Disbursing Agent is returned as undeliverable, no Distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then current address of such Holder or is notified in writing of such Holder's then-current address. Undeliverable distributions shall remain in the possession of the Reorganized Debtors until such time as a distribution becomes undeliverable, as set forth below. Undeliverable Cash shall not be entitled to any interest, dividends or other accruals of any kind.

Any Distribution that remains uncashed for a period of one hundred twenty (120) days shall be deemed undeliverable and the Distribution shall revert to the Reorganized Debtors, free and clear of such Holder's interest in the Distribution, to be distributed pursuant to the Plan. The Holder, shall be forever barred from asserting any such Claim on account of the Distribution against the Debtors, the Reorganized Debtors, or their respective assets. No such funds or other property shall escheat to any federal, state, or local government or other entity for any reason. Nothing contained in the Plan shall require the Debtors or Reorganized Debtors (as applicable) to attempt to locate any Holder of an Allowed Claim.

F. Manner of Cash Payments under the Plan

Except as otherwise provided in this Plan, Cash payments made under the Plan shall be in United States dollars by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Disbursing Agent.

G. Compliance with Tax Requirements

The Disbursing Agent may withhold and pay to the appropriate taxing authority all amounts required to be withheld under the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or Distribution on account of Claims. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed to the applicable Holders of the Claims. For tax purposes, Distributions received in respect of Allowed Claims will be allocated first to the principal amount of Allowed Claims with any excess allocated, if applicable, to unpaid interest that accrued on such Claims. The Disbursing Agent shall be authorized to collect such tax information from the applicable Holders of Claims (including social security numbers or other tax identification numbers) as it in its sole discretion deems necessary to effectuate the Plan. In order to receive Distributions under the Plan, all Holders of Claims that are entitled to receive Distributions under the Plan will need to identify themselves to the Disbursing Agent and provide tax information to the extent the Disbursing Agent deems appropriate (including completing the appropriate Form W-8 or Form W-9, as applicable to each Holder). The Disbursing Agent may refuse to make a Distribution to any Holder of a Claim that is entitled to receive a Distribution but that fails to furnish such information within the time period specified by the Disbursing Agent and such Distribution shall be waived and forfeited under the Plan. If the Disbursing Agent fails to withhold in respect of amounts received or distributable with respect to any such Holder and such Disbursing Agent is later held liable for the amount of such withholding, such Holder shall reimburse the Disbursing Agent for such liability.

Notwithstanding any other provision of this Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any taxing authority, including income, withholding, and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to this Plan unless and until such Holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Disbursing Agent in connection with such distribution.

H. Interest on Claims

Except as specifically provided for in this Plan or the Confirmation Order or required by the Bankruptcy Code, interest shall not accrue on Claims and no Holder of a Claim shall be entitled to interest on any Claim accruing on or after the Petition Date. Interest shall not accrue on any General Unsecured Claim that is a Disputed Claim in respect of the period from the Effective Date to the date a final Distribution is made thereon if and after that Disputed Claim becomes an Allowed Claim. Except as expressly provided in this Plan or in a Final Order of the Bankruptcy

Court, no prepetition Claim shall be Allowed to the extent that it is for postpetition interest or similar charges.

I. Setoff and Recoupment

The Debtors or Reorganized Debtors (as applicable) may, but shall not be required to, set off against, or recoup from, any Claim and the Distributions to be made under the Plan in respect thereof, any Claims, rights, Causes of Action, or defenses of any nature whatsoever that any of the Debtors or the Estates may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Reorganized Debtors, or the Estates of any right of Claim, claim, defense, Cause of Action, right of setoff or recoupment that any of them may have against the Holder of any Claim.

J. De Minimis Distributions; Charitable Donation

Notwithstanding anything to the contrary herein, the Reorganized Debtors shall not be required to make a Distribution to any Holder if the dollar amount of the Distribution is less than fifty dollars (\$50) or otherwise so small that the cost of making that Distribution exceeds the dollar amount of such Distribution. The Reorganized Debtors may hold the Distributions to be made to such Holder until the aggregate amount of such Distributions is in an amount equal to or greater than the greater of fifty dollars (\$50.00) or such amount that exceeds the cost of making the Distribution. If the aggregate Distributions of such Holder do not meet or exceed such amount, then the Reorganized Debtors shall not be required to make such Distributions to such Holder.

On or about the time that the final Distribution is made, the Reorganized Debtors may make a charitable donation with undistributed funds if, in the reasonable judgment of the Reorganized Debtors, the cost of calculating and making the final Distribution of the remaining funds is excessive in relation to the benefits to the Holders of Claims who would otherwise be entitled to such Distributions, and such charitable donation is provided to an entity not otherwise related to the Debtors or Reorganized Debtors (as applicable).

K. Statutory Fees

All fees due and payable under section 1930 of title 28 of the United States Code prior to the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Reorganized Debtors, on behalf of the Debtors, shall pay any and all such fees payable by the Debtors, when due and payable, and shall file with the Bankruptcy Court quarterly reports for each of the Debtors, in a form reasonably acceptable to the Bankruptcy Administrator. Each Debtor shall remain obligated to pay fees under section 1930 of title 28 of the United States Code until the earliest of that particular Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

L. No Distributions on Late-Filed Claims

Except as otherwise provided in a Final Order of the Bankruptcy Court, any Claim as to which a Proof of Claim was required to be filed and was first filed after the applicable Bar Date in the Chapter 11 Cases shall automatically be deemed a late-filed Claim that is disallowed in the

Chapter 11 Cases, without the need for (a) any further action by the Debtors or Reorganized Debtors (as applicable), or (b) an order of the Bankruptcy Court.

M. Claims Paid or Payable by Third Parties

Except as otherwise provided herein, the Debtors or Reorganized Debtors (as applicable) shall reduce a Claim, and such Claim shall be disallowed, without a Claims objection having to be filed and without any further notice to any party, or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment on account of such Claim from a party that is not a Debtor, a Reorganized Debtor, or the Disbursing Agent. To the extent a Holder of a Claim (i) receives a distribution under the Plan on account of such Claim and receives payment from a party that is not a Debtor, a Reorganized Debtor, or the Disbursing Agent on account of such Claim, and (ii) the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the Allowed amount of such Claim, the Holder shall, within two weeks of receipt thereof, repay or return to the Debtors or Reorganized Debtors (as applicable) the portion of the Plan distribution (up to the full amount of the Plan distribution) that, together with the payment from the third party, exceeds 100% of the Allowed amount of the Claim. Any and all rights of the Debtors or Reorganized Debtors (as applicable) to seek return or repayment of a distribution under the Plan from the Holder of a Claim on account of payment of such Claim by a party that is not a Debtor, a Reorganized Debtor, or the Disbursing Agent are expressly reserved.

No distributions under the Plan shall be made on account of any Allowed Claim that is payable by a third party, including pursuant to one of the Debtors' Insurance Policies, until the holder of such Allowed Claim has exhausted all remedies with respect to such third party or Insurance Policy. To the extent that one or more of the Debtors' insurers or another third party agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then upon (i) execution such agreement and (ii) the Debtors or Reorganized Debtors (as applicable) receiving notice thereof, the applicable portion of such Claim may be expunged without a Claim objection having to be filed and without any further notice to any party, or action, order, or approval of the Bankruptcy Court.

N. Distributions Free and Clear

Except as otherwise provided herein, any Distributions under the Plan shall be free and clear of any Liens, Claims, and encumbrances, and no other Entity shall have any interest (legal, beneficial or otherwise) in any Estate property distributed pursuant to the Plan.

O. Not Securities; Section 1145 Exemption

The respective rights of the Holders of Claims and Equity Interests arising under the Plan are not intended to be "securities" under applicable laws, but the Debtors do not represent or warrant that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the Debtors intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws to apply to their issuance under the Plan.

ARTICLE VI.
DISPUTED CLAIMS AND CLAIM OBJECTIONS

A. Payments and Distributions on Disputed Claims and Claims That Have Otherwise Not Been Allowed

Notwithstanding any provision in the Plan to the contrary, except as otherwise agreed by the Reorganized Debtors in their sole discretion, no partial payments and no partial distributions will be made with respect to a Disputed Claim or Claim that has otherwise not been Allowed until such disputes are resolved by settlement or Final Order and the Claim has been Allowed.

B. Disputed Claims Reserve

1. On each date Distributions are to be made under the Plan to Holders of Allowed Claims, the Reorganized Debtors shall retain on account of Disputed Claims an amount the Reorganized Debtors estimate is necessary to fund the Pro Rata share of such Distributions to Holders of Disputed Claims if such Disputed Claims were Allowed (or such lesser amount as may be estimated in accordance with Article III.F of this Plan), with any Disputed Claims that are unliquidated or contingent being reserved for in an amount reasonably determined by the Reorganized Debtors (the “*Disputed Claims Reserve*”).

2. Cash retained on account of such Disputed Claims shall be retained in the Disputed Claims Reserve for the benefit of the Holders of such Disputed Claims pending a determination of their entitlement thereto under the terms of this Plan. To the extent that the property placed in the Disputed Claims Reserve consists of Cash, that Cash may be deposited in an interest-bearing account at a qualified institution.

3. If any Disputed Claim is disallowed or Allowed in an amount that is lower than the aggregate assets retained in the Disputed Claims Reserve on account of such Disputed Claim, then, the excess assets reserved for such Claim shall automatically revert in the Reorganized Debtors and thereafter may be used consistent with the provisions of this Plan without restriction. Such assets shall not escheat to any federal, state, or local government or other Entity for any reason.

4. Payments on any Disputed Claim that becomes an Allowed Claim shall be distributed by the Disbursing Agent from the Disputed Claims Reserve on the next scheduled Distribution date after the Claim is Allowed. Distributions shall be made only to the extent of the aggregate distributions that the Holder of any such Allowed Claim would have received had such Claim been Allowed as of the Effective Date (less any taxes paid with respect to amounts held in the Disputed Claims Reserve). Distributions to each Holder of a Disputed Claim that has become an Allowed Claim (and to the extent that the Holder of the Disputed Claim has not received prior distributions on account of that Claim) shall be made in accordance with the provisions of the Plan.

5. The Disputed Claims Reserve shall be closed and extinguished by the Reorganized Debtors when all Distributions and other dispositions of Cash or other property required to be made therefrom under the Plan have been effectuated.

C. Claim Objections

From and after the Effective Date, the Reorganized Debtors shall have the exclusive right and standing to (i) object to and contest the allowance of all Claims, (ii) compromise and settle any Disputed Claim or Claim that has not otherwise been Allowed, without further order or approval of the Bankruptcy Court; and (iii) litigate to final resolution objections to Claims. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, all Disputed Claims shall be subject to the exclusive jurisdiction of the Bankruptcy Court.

D. Objection Deadline

All objections to Disputed Claims shall be filed no later than the Claims Objection Bar Date, unless otherwise ordered by the Bankruptcy Court after notice and a hearing, with notice only to those parties set forth on the Post-Effective Date Notice List.

E. Disallowance of Untimely Claims

Except as provided herein or otherwise agreed by the Debtors or Reorganized Debtors (as applicable), any and all Holders of Claims filed after the applicable Bar Date shall not be treated as Creditors for purposes of voting and distribution pursuant to Bankruptcy Rule 3003(c)(2) unless on or before the Voting Deadline (in the case of voting) or the Confirmation Date (in the case of distributions), such late Proofs of Claim are deemed timely filed by a Final Order of the Bankruptcy Court.

Claims for which Proofs of Claim or requests for allowance were required to be filed by a Bar Date occurring before the Effective Date, and with respect to which no Proof of Claim or request for allowance was filed before the applicable Bar Date, shall be forever disallowed, barred, and discharged in their entirety as of the Effective Date, and shall not be enforceable against the Debtors, the Reorganized Debtors, or the Estates, unless such Proofs of Claim or requests for allowance are deemed timely filed by a Final Order of the Bankruptcy Court before the Effective Date.

Claims for which Proofs of Claim or requests for allowance are required to be filed after the Effective Date pursuant to a Bar Date established by this Plan, and with respect to which no Proof of Claim or request for allowance is filed by the applicable Bar Date, shall be forever disallowed, barred, and discharged in their entirety as of the applicable Bar Date, and shall not be enforceable against the Debtors, the Reorganized Debtors, or the Estates.

F. Allowance of Claims

Except as expressly provided herein or in any Final Order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim shall be deemed Allowed, unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court enters a Final Order in the Chapter 11 Cases allowing such Claim. Except as expressly provided in the Plan or in any Final Order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), the Reorganized Debtors, on and after the

Effective Date, will have and retain any and all rights and defenses the Debtors had with respect to such Claims.

ARTICLE VII. TREATMENT OF EXECUTORY CONTRACTS

A. Assumption or Rejection of Executory Contracts and Unexpired Leases

In accordance with sections 365(a) and 1123(b)(2) of the Bankruptcy Code, except as otherwise provided in the Plan or Confirmation Order, all executory contracts and unexpired leases that exist between the Debtors and any Entity shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or unexpired leases (a) that has been assumed or rejected by a Final Order of the Bankruptcy Court entered prior to the Effective Date, (b) as to which a motion for approval of the assumption of such executory contract or unexpired lease has been filed and served prior to the Effective Date, or (c) is listed on the Schedule of Assumed Executory Contracts and Unexpired Leases contained in the Plan Supplement and is not thereafter removed in any amended Plan Supplement filed prior to the Effective Date. Subject to the occurrence of the Effective Date, entry of the Confirmation Order shall constitute approval of such rejection under section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such rejection is in the best interests of the Debtors, their Estates, and all parties in interest in the Chapter 11 Cases. Upon the occurrence of the Effective Date, each Executory Contract or Unexpired Lease listed on the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement and any amendments thereto filed prior to the Effective Date shall be assumed, or assumed and assigned, as applicable, and shall vest in and be fully enforceable by the Reorganized Debtors or their assignees in accordance with its terms, except as modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing or providing for its assumption or applicable federal law. The Confirmation Order shall constitute an order of the Bankruptcy Court approving any such assumptions pursuant to Sections 365(a) and 1123 of the Bankruptcy Code. With respect to each such executory contract and unexpired lease listed on the Schedule of Assumed Executory Contracts and Unexpired Leases in the Plan Supplement, the Debtors shall have designated a proposed Cure Claim, and the assumption of such executory contracts and unexpired leases may be conditioned upon the disposition of all issues with respect to such Cure Claim. In addition to any rights afforded the Debtors or Reorganized Debtors (as applicable) in this Article VII of the Plan, the Debtors reserve the right to remove any executory contract or unexpired lease from the Schedule of Assumed Executory Contracts and Unexpired Leases at any time prior to the Effective Date through the filing of an amended Plan Supplement.

B. Claims Based on Rejection of Executory Contracts and Unexpired Leases

Claims created by the rejection of executory contracts and unexpired leases under this Plan must be filed with the Bankruptcy Court and served on the Reorganized Debtors no later than thirty (30) days after the Effective Date. Any Claims arising from the rejection of an executory contract or unexpired lease under this Plan for which Proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtors, the Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article IX.E herein. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein

shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of Article III herein.

C. Objections to Assumption and Assignment and Proposed Cure Claims

The Debtors or Reorganized Debtors (as applicable), except as otherwise agreed by the parties, will pay Cure Claims for any and all undisputed defaults under any Executory Contract or Unexpired Lease that is assumed or assigned by the Debtors in accordance with, and to the extent required by, Section 365 of the Bankruptcy Code. Proposed Cure Claims with respect to any Executory Contract or Unexpired Lease that is assumed and assigned by the Debtors shall be filed with the Plan Supplement, and any amendments thereto will be filed prior to the Effective Date. Any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan (including, for the avoidance of doubt, requests for payment of Cure Claims that differ from the amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors) must be filed on or before the deadline to object to Plan confirmation. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or assignment or Cure Claim will be deemed to have assented to such assumption, assignment, or Cure Claim. In the event there is a dispute as of the Effective Date regarding the amount required to cure defaults under any Executory Contract or Unexpired Lease that the Debtors propose to assume or assign, the Debtors or Reorganized Debtors (as applicable) shall have until thirty (30) days after entry of a Final Order determining the amount, if any, of the Debtors' or Reorganized Debtors' (as applicable) liability with respect thereto, or as may otherwise be agreed by the parties, to determine whether to assume, assign or reject the related Executory Contract or Unexpired Lease. In the event the Debtors or Reorganized Debtors determine to assume or assign the applicable Executory Contract or Unexpired Lease related to the disputed Cure Claim, such disputed Cure Claim shall be paid either within thirty (30) days of the entry of a Final Order determining the amount, if any, of the Debtors' or Reorganized Debtors' (as applicable) liability with respect thereto, or as may otherwise be agreed to by the parties.

D. Limited Extension of Time to Assume or Reject

In the event of a dispute as to whether a contract is executory or a lease is unexpired is pending before the Court as of the Effective Date, the right of the Debtors or the Reorganized Debtors (as applicable) to move to assume such contract or lease shall be extended until the date that is thirty (30) days after the entry of a Final Order by the Bankruptcy Court determining that the contract is executory or the lease is unexpired. In the event the Debtors or Reorganized Debtors (as applicable) do not timely move to assume such contract or lease, the contract(s) or lease(s) at issue will be deemed rejected pursuant to the Plan. In the event the Reorganized Debtors become aware after the Effective Date of the existence of an Executory Contract or Unexpired Lease, the right of the Reorganized Debtors to move to assume such contract or lease shall be extended until the date that is thirty (30) days after the date on which the Reorganized Debtors become aware of the existence of such contract or lease. In the event the Debtor or Reorganized Debtors (as applicable) do not timely move to assume such contract or lease, the contract(s) or lease(s) at issue will be deemed rejected pursuant to the Plan. Any cure amount to be paid in connection with a motion to assume filed under this Article VII.D of the Plan shall be paid either within thirty (30) days of the entry of a Final Order determining the amount, if any, of the Debtors' or Reorganized

Debtors' (as applicable) liability with respect thereto, or as may otherwise be agreed to by the parties.

E. Indemnification and Reimbursement

Subject to the occurrence of the Effective Date, all Allowed Claims against the Debtors for indemnification, defense, reimbursement, or limitation of liability of current or former directors, officers, or employees of the Debtors against any Claims, costs, liabilities or Causes of Action as provided in the Debtors' articles of organization, certificates of incorporation, bylaws, other organizational documents, or applicable law, shall, to the extent such indemnification, defense, reimbursement, or limitation is owed in connection with one or more events or omissions occurring before the Petition Date, be (a) paid only to the extent of any applicable insurance coverage, and (b) to the extent a Claim is Allowed, treated as Allowed General Unsecured Claims to the extent such Claims are not covered by any applicable insurance, including deductibles. Nothing contained herein shall affect the rights of directors, officers, or employees under any Insurance Policy or coverage with respect to such Claims, costs, liabilities, or Causes of Action or limit the rights of the Debtors, the Estates, or the Reorganized Debtors to object to, seek to subordinate or otherwise contest or challenge Claims or rights asserted by any current or former officer, director or employee of the Debtors.

F. Reservation of Rights

Notwithstanding anything to the contrary in the Plan other than with respect to disputes over Cure Claims set forth in Article VII.C, prior to the Effective Date, the Debtors may amend any decision with respect to the assumption or rejection of any Executory Contract or Unexpired Lease at any time prior to the Effective Date. Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder.

ARTICLE VIII. CONDITIONS PRECEDENT

A. Conditions Precedent

The following are conditions precedent to the Effective Date that must be satisfied or waived:

1. There shall be no stay, injunction, or appeal in effect with respect to the Confirmation Order, and the Confirmation Order shall have become a Final Order.
2. The Bankruptcy Court shall have entered the Solicitation Procedures Order in form and substance acceptable to the Debtors.
3. All agreements and instruments that are exhibits to the Plan or Plan Supplement shall be in a form acceptable to the Debtors and have been duly executed and delivered.

4. All other actions, authorizations, consents and regulatory approvals required (if any) and necessary to implement the provisions of the Plan shall have been obtained, effected or executed in a manner acceptable to the Debtors or, if waivable, waived by the Entities entitled to the benefit thereof.

5. The New FM Units shall have been issued and authorized and shall be consistent with the Plan.

B. Waiver

Notwithstanding the foregoing conditions in Article VIII.A, the Debtors reserve, in their sole discretion, the right to waive the occurrence of any condition precedent or to modify any of the foregoing conditions precedent. Any such written waiver of a condition precedent set forth in this Article may be effected at any time, without notice, without leave or order of the Bankruptcy Court or without any other formal action other than proceeding to consummate the Plan; *provided, however*, that such waiver will be reflected in the notice of occurrence of the Effective Date filed pursuant to Article VIII.E. Any actions required to be taken on the Effective Date or Confirmation Date (as applicable) shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action.

C. Effect of Failure of Conditions

In the event the Effective Date does not occur, upon motion by any party in interest, made before the time that each of the conditions precedent to the Effective Date has been satisfied or waived: (a) the Confirmation Order shall be vacated, (b) no Distributions under the Plan shall be made, (c) the Debtors and all Holders of Claims and Equity Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (d) the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged, and nothing contained in the Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Debtors or any other Entity or to prejudice in any manner the rights of the Debtors or any Entity in any further proceedings involving the Debtors unless extended by Bankruptcy Court order. Notwithstanding the foregoing, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived by the Debtors or the Reorganized Debtors (as applicable) before the Bankruptcy Court enters a Final Order granting such motion. If each of the conditions to the Effective Date is not satisfied or duly waived by the Debtors or the Reorganized Debtors (as applicable) on or before the date that is ninety (90) days following the Confirmation Date, the Confirmation Order shall automatically be vacated without further order of the Bankruptcy Court; *provided, however*, that any party in interest may file a motion to extend such date.

D. Substantial Consummation

“Substantial Consummation” of the Plan, as defined in section 1101(2) of the Bankruptcy Code, shall be deemed to occur on the Effective Date.

E. Notice of Effective Date

The Debtors shall file with the Bankruptcy Court a notice of occurrence of the Effective Date within a reasonable period of time after the conditions in Article VIII have been satisfied or waived pursuant to Article VIII.B.

**ARTICLE IX.
INDEMNIFICATION, RELEASE, INJUNCTIVE, AND RELATED PROVISIONS**

A. Term of Bankruptcy Injunction or Stay

Unless otherwise provided in the Plan, the Confirmation Order, or a separate order from the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Cases in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise (excluding any injunctions or stays contained in the Plan or the Confirmation Order), and in existence on the Confirmation Date shall remain in full force and effect until the later of the Effective Date and the date indicated in such applicable order.

B. Discharge of Claims and Termination of Interests

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument or other agreement or document created pursuant to the Plan, including the agreements and documents contained in the Plan Supplement, the distributions, rights and treatment that are provided in the Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of Claims and Causes of Action of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against liabilities of, liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands, liabilities and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not the Holder of such a Claim has accepted the Plan. Any default or “event of default” by the Debtors with respect to any Claim or Equity Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims subject to the Effective Date occurring.

C. Releases

1. Releases by the Debtors and their Estates. Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, and to the fullest extent permitted by applicable law, the adequacy of which is hereby confirmed, for the good and valuable consideration provided by each of the Released Parties, each of the Debtors, the Estates, each of the Debtors’ and the Estates’ current and former affiliates (collectively, the “*Debtor Releasing Parties*”) shall be deemed to have provided a full, complete, unconditional, and irrevocable release to the Released Parties from any and all Causes of Action and any

other debts, obligations, rights, suits, judgments, damages, actions, remedies and liabilities whatsoever, whether accrued or unaccrued, whether known or unknown, foreseen or unforeseen, existing on or before the Effective Date, in law, at equity, whether for tort, contract, violations of statutes (including but not limited to the federal or state securities laws), or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, including, without limitation, those that any of the Debtors would have been legally entitled to assert, including those in any way related to the Chapter 11 Cases, the Plan, the Plan Supplement, the Disclosure Statement, and any related agreements, instruments, or documents; *provided, however*, that the foregoing release shall not prohibit the Reorganized Debtors from asserting any and all defenses and counterclaims in respect of any Disputed Claim asserted by any of the Released Parties; *provided further*, that the Released Parties shall not be released from any act or omission that constitutes fraud, willful misconduct, or gross negligence as determined by a Final Order.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in this Article IX.C.1 do not release (1) any Causes of Action identified in the Schedule of Retained Causes of Action or (2) any post-Effective Date obligations of any party or Entity: (A) arising under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan; or (B) expressly set forth in and preserved by the Plan, the Plan Supplement, or related documents.

2. Releases by Holders of Claims and Equity Interests. For good and valuable consideration, as of the Effective Date, each of the Releasing Parties (regardless of whether a Releasing Party is a Released Party), shall be deemed to have, to the fullest extent permitted by applicable law, the adequacy of which is hereby confirmed, fully, completely, unconditionally, irrevocably, and forever released the Released Parties of and from any and all Causes of Action, and any other debts, obligations, rights, suits, judgments damages, actions, remedies and liabilities whatsoever, whether accrued or unaccrued, whether known or unknown, foreseen or unforeseen, existing on or before the Effective Date, in law, at equity, whether for tort, contract, violations of statutes (including but not limited to the federal or state securities laws), or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, including those in any way related to the Chapter 11 Cases, the Plan, the Plan Supplement, the Disclosure Statement, and any related agreements, instruments, or documents; *provided, however* that the Released Parties shall not be released from any act or omission that constitutes fraud, willful misconduct, or gross negligence as determined by a Final Order.

Notwithstanding anything to the contrary in the foregoing, the releases set forth in this Article IX.C.2 do not release any post-Effective Date obligations of any party or Entity arising under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

3. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the releases set forth in this Article IX.C under Bankruptcy Rule 9019 and its

finding that they are: (a) in exchange for good and valuable consideration, representing a good faith settlement and compromise of the Claims and Causes of Action released by this Plan; (b) in the best interests of the Debtors and all Holders of Claims and Equity Interests; (c) fair, equitable and reasonable; (d) approved after due notice and opportunity for hearing; and (e) a bar to the assertion of any Claim or Cause of Action thereby released.

D. Exculpation

Notwithstanding anything contained in the Plan to the contrary, the Exculpated Parties shall neither have nor incur any liability to any Entity for any act or omission arising after the Petition Date and through the Effective Date in connection with, or related to, formulating, negotiating, preparing, disseminating, implementing, administering, confirming or consummating the Plan, the Disclosure Statement, or any other contract, instrument, release, other agreement or document created or entered into in connection with the Plan, or any other post-petition act taken or omitted to be taken in connection with the Chapter 11 Cases; *provided, however*, that the foregoing provisions of this Article IX.D shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted fraud, willful misconduct, or gross negligence.

E. Injunctive Provisions

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold or may hold Claims or Equity Interests that have been released, discharged or are subject to exculpation pursuant to Article IX of the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, and/or the Released Parties:

- 1. commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests;**
- 2. enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against such Entities on account of or in connection with or with respect to any such Claims or Equity Interests;**
- 3. creating, perfecting or enforcing any lien or encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims or Equity Interests;**
- 4. asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Equity Interests unless such Holder has filed a motion requesting the right to perform such setoff; and**

5. **commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests released or settled pursuant to the Plan.**

Notwithstanding anything to the contrary in the foregoing, the injunction does not enjoin any party under the Plan or under any document, instrument or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to implement the Plan from bringing an action to enforce the terms of the Plan or such document, instrument or agreement (including those attached to the Disclosure Statement or included in the Plan Supplement) executed to implement the Plan.

F. Releases of Liens and Cancellation of Documents

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created under the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against property of the Estates distributed under the Plan shall be fully released and discharged and all of the right, title and interest of any Holder of such mortgages, deeds of trust, Liens, pledges or other security interest shall revert to the Debtors.

In addition, on the Effective Date, except to the extent otherwise provided in this Plan, any and all notes, instruments, debentures, certificates, and other documents evidencing Claims against the Debtors shall be deemed inoperative and unenforceable solely as against the Debtors and their Estates.

Nothing contained in this Plan shall revive, preserve, or transfer any Claims or Liens that have been released pursuant to any prior order of the Bankruptcy Court.

ARTICLE X. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, to the extent legally permissible, retain exclusive jurisdiction over the Chapter 11 Cases and all Entities with respect to all matters related to the Chapter 11 Cases, the Debtors, the Reorganized Debtors, the Estates, and the Plan until the Chapter 11 Cases are closed, including jurisdiction to issue any order necessary to administer the Debtors' Estates and enforce the terms of this Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code, including to, without limitation:

A. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest against the Debtors, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims;

B. grant, deny or otherwise resolve any and all applications of Professionals or Entities retained in the Chapter 11 Cases by the Debtors or the Committee for allowance of compensation or reimbursement of expenses authorized by the Bankruptcy Code, the Plan, or order of the Bankruptcy Court, for periods ending by the Effective Date;

C. resolve any matters related to the assumption, assignment or rejection of any executory contract or unexpired leases to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom;

D. ensure that Distributions to Holders of Allowed Claims are accomplished under the provisions of the Plan, including by resolving any disputes regarding the Debtors' or the Reorganized Debtors' entitlement to recover assets held by third parties;

E. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving a Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtors after the Effective Date;

F. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and the Confirmation Order;

G. resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Plan, the Confirmation Order, or any Entity's obligations incurred in connection with the Plan or the Confirmation Order;

H. issue injunctions, enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Effective Date or enforcement of the Plan;

I. enforce Article IX.A, Article IX.B, Article IX.C, and Article IX.D hereof;

J. enforce the injunctions set forth in Article IX.E hereof;

K. resolve any cases, controversies, suits or disputes with respect to the releases, injunction, and other provisions contained in Article IX herein, and enter such orders as may be necessary or appropriate to implement or enforce all such releases, injunctions, and other provisions of this Plan;

L. enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked, or vacated;

M. resolve any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document adopted in connection with the Plan or the Disclosure Statement;

N. recover all assets of the Debtor and property of the Debtor's Estates, wherever located;

O. hear and determine any issue arising under this Plan;

P. adjudicate any adversary proceeding or other proceeding which may be commenced against any Entity arising from, related to, or in connection with (i) any Chapter 5 Action; and (ii) claims against third parties relating to the facts and circumstances surrounding the same;

Q. hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;

R. enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);

S. resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof, or with respect to any other reserves established pursuant to this Plan and the administration thereof;

T. resolve any disputes concerning whether an Entity had sufficient notice of the Chapter 11 Case, the applicable Bar Date, the hearing on the approval of the Disclosure Statement as containing adequate information, the hearing on the confirmation of the Plan for the purpose of determining whether a Claim is waived, released, disallowed, or otherwise unenforceable hereunder, or for any other purpose;

U. hear any other matter not inconsistent with the Bankruptcy Code; and

V. enter an order and a Final Decree closing the Chapter 11 Cases.

All Creditors who have filed Claims in the Chapter 11 Cases shall be deemed to have consented to the jurisdiction of the Bankruptcy Court for the purposes of pursuit of Causes of Action by the Reorganized Debtors.

ARTICLE XI. MISCELLANEOUS PROVISIONS

A. **Modification of Plan**

Subject to the limitations contained in the Plan: (a) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; provided, however, that any pre-Confirmation Date amendments shall not materially or adversely affect the interests, rights or treatment of any Allowed Claims or Equity Interests under the Plan; and (b) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors (as applicable) may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

Objections with respect to any amendments or modifications to the Plan (as and to the extent permitted hereby) filed after the deadline for objections to the Plan, as set by the Bankruptcy Court, may be brought at the Confirmation Hearing. The Plan, and any modification or supplement thereof, may be inspected in the Office of the Clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims may obtain a copy of the Plan and any supplement or modification, if any, by contacting the Claims Agent at fminfo@donlinrecano.com or by reviewing such document on the internet at <https://www.donlinrecano.com/Clients/fm/Dockets>. The documents annexed to the Disclosure Statement or contained in any modification or supplement to the Plan or the Disclosure Statement are an integral part of the Plan and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

B. Extension of Time

For cause shown, any deadlines herein that are applicable to the Debtors or the Reorganized Debtors and which are not otherwise extendable, may be extended by the Bankruptcy Court.

C. Post-Effective Date Notice List

Because certain Entities may not desire to continue to receive notices after the Effective Date, this Plan provides for the establishment of a Post-Effective Date Notice List. Entities on such Post-Effective Date Notice List will be given certain notices and in some cases an opportunity to object to certain matters under this Plan (as described herein). Any Entity desiring to be included in the Post-Effective Date Notice List must (i) file a request to be included on the Post-Effective Date Notice List and include thereon its name, contact person, address, telephone number and facsimile number, within thirty (30) days after the Effective Date, and (ii) concurrently serve a copy of its request to be included on the Post-Effective Date Notice List on the Reorganized Debtors and their counsel. On or before sixty (60) days after the Effective Date, the Reorganized Debtors shall compile a list of all Entities on the Post-Effective Date Notice List and file such list with the Bankruptcy Court. Those parties set forth in Article XI.L of the Plan shall be included in the Post-Effective Date Notice List without the necessity of filing a request.

D. Revocation of the Plan

The Debtors reserve the right to revoke or withdraw the Plan prior to the entry of the Confirmation Order, and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan or if entry of the Confirmation Order or the Effective Date does not occur, then: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts effected by the Plan, and any document or agreement executed pursuant hereto shall be deemed null and void; and (c) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, such Debtor or any other Entity; (ii) prejudice in any manner the rights of the Debtors or any other Entity; or (iii) constitute an admission of any sort by the Debtors or any other Entity.

E. Binding Effect

On the Effective Date, the provisions of the Plan shall bind any Holder of a Claim against, or Equity Interest in, a Debtor and such Holder's respective successors and assigns, whether or not

the Claim or Equity Interest of such Holder is Impaired under the Plan, whether or not such Holder has accepted the Plan and whether or not such Holder is entitled to a Distribution under the Plan.

F. Successors and Assigns

The rights, benefits and obligations of any Entity named or referred to herein shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

G. Governing Law

Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, unless otherwise stated, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the state of Alabama without giving effect to the principles of conflict of laws thereof.

H. Reservation of Rights

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Effective Date occurs. Neither the filing of the Plan, any statement or provision contained herein or the Disclosure Statement, nor the taking of any action by the Debtors or any Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (a) the Debtors or other Entity with respect to the Holders of Claims or Equity Interests or other parties-in-interest; or (b) any Holder of a Claim or Equity Interest or other party-in-interest prior to the Effective Date.

I. Article 1146 Exemption

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property under this Plan shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any prohibited tax or governmental assessment and to accept for filing and recordation instruments or other documents transfers of property without the payment of any tax or governmental assessment.

J. Section 1125(e) Good Faith Compliance

Confirmation of the Plan shall act as a finding by the Bankruptcy Court that the Debtors and each of their respective representatives have acted in “good faith” under section 1125(e) of the Bankruptcy Code.

K. Further Assurances

The Debtors, the Reorganized Debtors, and all Holders of Claims receiving Distributions hereunder, and all other parties in interest shall, from time to time, prepare, execute, and deliver

any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

L. Service of Documents

Any pleading, notice, or other document required or permitted to be made in accordance with this Plan upon the Debtors shall be made in writing and shall be delivered personally, by facsimile transmission, electronic mail or by first class U.S. mail, postage prepaid, as follows:

To the Debtors:

FM Coal, LLC
P.O. Box 1608
Jasper, Alabama 35502

with a copy to:

Waller Lansden Dortch & Davis, LLP
1901 Sixth Avenue North, Suite 1400
Attn: Jesse S. Vogtle, Jr., Eric T. Ray, and Paul Greenwood
Email: jesse.vogtle@wallerlaw.com, eric.ray@wallerlaw.com, and
paul.greenwood@wallerlaw.com

and

Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219
Attn: John C. Tishler and Tyler N. Layne
Email: john.tishler@wallerlaw.com and tyler.layne@wallerlaw.com

To the Reorganized Debtors:

FM Coal, LLC
P.O. Box 1608
Jasper, Alabama 35502
Attn: John McNab, General Manager

M. Filing of Additional Documents

On or before the Effective Date, the Debtors may file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

N. Severability

The provisions of the Plan shall not be severable unless the Debtors agree to such severance and such severance would constitute a permissible modification of the Plan pursuant to section 1127 of the Bankruptcy Code.

O. Entire Agreement

The Plan, and any supplements or amendments hereto, supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

P. Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the final versions of the documents contained in the Plan Supplement and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Equity Interests (regardless of whether such Claims or Equity Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors. All Claims and debts shall be as fixed, adjusted or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

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Dated: November 25, 2020

FM Coal, LLC on behalf of itself and
all other Debtors

/s/ Michael Costello

Name: Michael Costello

Title: Sole Member of FM Coal, LLC

EXHIBIT B

Solicitation Procedures Order (Without Exhibits)

EXHIBIT C

The Debtors' Liquidation Analysis

FM Coal

Preliminary Liquidation Analysis

as of 9/30/20

	9/30/20 BV	%	OLV	%	FLV
Assets					
Current Assets					
Cash	\$ 565	100%	\$ 565	100%	\$ 565
Accounts Receivable (Assumed no Set off Rights)	2,350	90%	2,115	80%	1,880
Inventory	1,841	50%	921	25%	460
Coop Dividend Receivable (Assumes no Set-off Rights)	897	95%	852	90%	807
Prepaid Expenses	647	10%	65	5%	32
Total Current Assets	6,300		4,517		3,745
Fixed Assets					
Land	921	50%	461	40%	368
Machinery & Equipment	60,803	20%	12,161	15%	9,120
Total	61,724		12,621		9,489
Less: Accumulated Depreciation	(12,735)	0%	-	0%	-
Net Property and Equipment	48,989		12,621		9,489
Other Assets					
Goodwill	12,303	0%	-	0%	-
Permits	4,675	0%	-	0%	-
Mine Startup Costs	1,404	0%	-	0%	-
Deposits and Other	440	10%	44	5%	22
Total	18,822		44		22
Total	\$ 74,111		17,182		13,256
Less:					
Personal & Real Property Auctioneer / RE Agent Fee (10%)			(1,262)		(949)
Preliminary Estimated Wind-down Expenses					
Final Payroll (2 weeks - 1 pay period)			(360)		(360)
Wind-down / Insurance / Other Costs Labor			(300)		(300)
Security (5 X 24hrs @ \$30 per hr. for 26 Weeks)			(655)		(655)
Professional Fee Placeholder (Chapter 7)			(200)		(200)
Other / Contingency			(250)		(250)
Net Available to Senior Secured Lender			\$ 14,155		\$ 10,542

EXHIBIT D

The Debtors' Financial Projections

FM Coal, LLC and subsidiaries
Income Statement - Consolidated
(in 000s, except tonnage data)

	Actual CY14-15	Actual CY16	Actual CY17	Actual CY18	Actual CY19	Plan Forecast CY20	Plan Forecast CY21	Plan Forecast CY22
Revenue								
Alabama Coal Cooperative	\$ 106,062	\$ 63,406	\$ 71,671	\$ 57,224	\$ 50,281	\$ 34,848	\$ 35,702	\$ 36,353
Other coal sales	130,881	60,641	50,468	47,177	36,542	19,665	21,258	23,700
Total revenue	236,943	124,047	122,139	104,401	86,823	54,513	56,959	60,053
Direct cost of sales								
Equipment repair & maint - mining	30,059	18,231	20,575	22,977	17,234	6,246	6,978	7,356
Payroll expenses - mining	26,357	16,798	18,842	17,263	16,875	10,605	11,060	11,744
Fuel	35,786	13,018	13,691	15,783	12,294	4,614	5,269	5,555
Explosives	29,695	14,819	11,696	11,550	8,338	4,885	5,126	5,405
Highwall miner costs	-	-	5,275	1,081	3,639	4,726	427	450
Purchased coal	8,370	5,145	1,444	2,578	2,172	56	-	-
Reclamation	2,071	4,494	1,572	666	2,417	4,382	5,571	5,405
Washing coal expenses	1,997	1,373	1,243	1,253	840	137	-	-
Engineering	827	991	725	627	763	412	616	649
Equipment lease/rental	2,920	2,843	1,826	794	853	400	199	210
Miscellaneous mining expense	1,772	1,736	1,116	486	634	991	1,406	991
Security	1,089	821	943	665	576	57	39	41
Electric power	-	-	320	304	684	568	613	647
Coal analysis	-	87	15	-	20	232	285	300
Inventory adjustment	-	-	-	-	(1,835)	430	-	-
Total direct cost of sales	140,944	80,357	79,284	76,027	65,505	38,741	37,589	38,753
Contribution margin	95,999	43,690	42,855	28,374	21,319	15,772	19,370	21,300
Indirect cost of sales								
Freight & delivery	17,849	10,446	9,772	10,347	10,522	6,532	6,605	6,806
Royalties	19,083	7,998	7,574	7,419	4,738	1,868	2,278	2,402
Depreciation	12,336	-	1,301	4,094	4,164	4,336	4,272	4,272
Permit costs and amortization	284	273	759	1,208	1,309	1,376	1,253	1,321
Taxes	2,975	1,566	1,611	1,506	987	831	854	901
Insurance	1,265	686	673	609	571	733	854	901
Goodwill amortization	-	-	473	1,420	-	-	-	-
Total indirect cost of sales	53,791	20,971	22,163	26,602	22,290	15,677	16,118	16,603
Gross profit (loss)	42,208	22,719	20,692	1,771	(972)	95	3,253	4,697
General and administrative								
Payroll expenses - office	6,595	4,143	1,381	1,273	1,190	1,089	1,133	1,174
Office expenses	603	352	802	712	617	231	231	230
Professional fees	997	897	736	588	556	241	241	240
Restructuring fees	-	-	-	-	222	3,886	200	-
Fines and penalties	37	17	5	9	40	52	52	52
Travel & entertainment	138	152	49	45	19	16	16	16
Donation	42	31	37	59	5	-	-	-
Total general and administrative	8,412	5,593	3,011	2,686	2,648	5,515	1,873	1,711
Operating Income/(Loss)	33,796	17,126	17,682	(915)	(3,620)	(5,420)	1,380	2,985
Other income/(expense)								
Interest expense	(3,883)	(1,062)	(1,450)	(4,646)	(4,761)	(3,881)	(1,289)	(1,001)
Miscellaneous income/(expense)	30	32	1,794	342	94	(353)	-	-
Gain/loss on asset disposal	(191)	337	-	403	(138)	369	-	-
Debt forgiveness income	-	-	-	-	-	-	46,309	-
Insurance proceeds	-	507	-	-	26	-	-	-
Goodwill writeoff	-	-	-	-	-	-	(12,303)	-
Total other (income)/expense	(4,044)	(186)	344	(3,902)	(4,779)	(3,865)	32,717	(1,001)
Net income/(loss)	\$ 29,751	\$ 16,940	\$ 18,026	\$ (4,817)	\$ (8,399)	\$ (9,285)	\$ 34,097	\$ 1,985

Memo:

Direct COGS % of Sales	59.5%	64.8%	64.9%	72.8%	75.4%	71.1%	66.0%	64.5%
Direct Labor % of Sales	11.1%	13.5%	15.4%	16.5%	19.4%	19.5%	19.4%	19.6%
R&M % of Sales	12.7%	14.7%	16.8%	22.0%	19.8%	11.5%	12.2%	12.3%
Equipment Lease/Rental % of Sales	1.2%	2.3%	1.5%	0.8%	1.0%	0.7%	0.3%	0.3%
Gross Profit % of Sales	17.8%	18.3%	16.9%	1.7%	(1.1%)	0.2%	5.7%	7.8%
EBITDAR	\$ 46,415	\$ 17,399	\$ 20,215	\$ 5,807	\$ 2,074	\$ 3,663	\$ 6,818	\$ 8,223
EBITDAR % of Sales	19.6%	14.0%	16.6%	5.6%	2.4%	6.7%	12.0%	13.7%
Tons Sold	2,707,608	1,461,338	1,452,302	1,168,717	949,330	613,523	630,614	650,787
Revenue per Ton	\$ 87.51	\$ 84.89	\$ 84.10	\$ 89.33	\$ 91.46	\$ 88.85	\$ 90.32	\$ 92.28

FM Coal, LLC and subsidiaries
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	Actual 2020 Q120 Jan-20	Actual 2020 Q120 Feb-20	Actual 2020 Q120 Mar-20	Actual 2020 Q220 Apr-20	Actual 2020 Q220 May-20	Actual 2020 Q220 Jun-20	Actual 2020 Q320 Jul-20	Actual 2020 Q320 Aug-20	Actual 2020 Q320 Sep-20	Forecast 2020 Q420 Oct-20	Forecast 2020 Q420 Nov-20	Forecast 2020 Q420 Dec-20	Forecast 2020 CY20 2020 Total
Revenue													
Alabama Coal Cooperative	\$ 2,658	\$ 2,785	\$ 2,228	\$ 3,313	\$ 2,841	\$ 2,503	\$ 3,563	\$ 2,376	\$ 2,989	\$ 2,200	\$ 4,048	\$ 3,344	\$ 34,848
Other coal sales	2,723	1,683	1,837	1,580	1,324	1,651	1,571	1,468	1,271	1,665	1,446	1,446	19,665
Total revenue	5,381	4,469	4,065	4,893	4,165	4,153	5,135	3,844	4,260	3,865	5,494	4,790	54,513
Direct cost of sales													
Equipment repair & maint - mining	889	424	480	418	451	442	531	607	447	425	604	527	6,246
Payroll expenses - mining	1,132	852	1,002	950	652	827	837	859	807	734	1,044	910	10,605
Fuel	656	661	324	299	248	283	312	310	299	271	508	443	4,614
Explosives	513	263	359	498	397	390	429	413	349	348	494	431	4,885
Highwall miner costs	526	724	137	591	304	151	447	621	319	290	330	287	4,726
Purchased coal	26	3	-	-	-	27	-	-	-	-	-	-	56
Reclamation	606	540	343	257	573	224	329	259	199	181	440	431	4,382
Washing coal expenses	105	32	-	-	-	-	-	-	-	-	-	-	137
Engineering	-	2	61	19	15	44	50	21	46	42	59	52	412
Equipment lease/rental	73	73	80	46	14	17	15	18	14	14	19	17	400
Miscellaneous mining expense	140	142	61	6	15	57	66	87	97	88	125	109	991
Security	6	16	3	3	4	5	4	4	3	3	4	3	57
Electric power	59	34	51	57	31	45	44	48	46	42	59	52	568
Coal analysis	-	-	30	19	20	43	17	10	17	25	22	22	432
Inventory adjustment	75	1	479	27	131	(156)	(6)	(119)	(2)	-	-	-	230
Total direct cost of sales	4,807	3,765	3,409	3,202	2,854	2,377	3,101	3,146	2,633	2,453	3,711	3,283	38,741
Contribution margin	574	704	656	1,691	1,311	1,777	2,033	699	1,626	1,412	1,783	1,507	15,772
Indirect cost of sales													
Freight & delivery	908	489	609	526	450	517	476	575	395	464	549	575	6,532
Royalties	186	122	117	172	146	177	212	87	150	136	194	169	1,868
Depreciation	358	358	359	359	359	359	369	370	379	356	356	356	4,336
Permit costs and amortization	121	119	107	107	138	117	117	120	118	85	121	105	1,376
Taxes	67	50	84	64	51	94	76	63	70	58	82	72	831
Insurance	46	50	65	49	69	56	84	43	59	58	82	72	733
Goodwill amortization	-	-	-	-	-	-	-	-	-	-	-	-	-
Total indirect cost of sales	1,685	1,187	1,341	1,277	1,213	1,320	1,335	1,257	1,172	1,157	1,385	1,349	15,677
Gross profit (loss)	(1,110)	(483)	(685)	414	98	457	698	(558)	454	255	398	158	95
General and administrative													
Payroll expenses - office	90	63	114	0	146	58	124	88	109	96	96	105	1,089
Office expenses	32	7	25	11	31	17	16	16	17	20	20	21	231
Professional fees	60	14	27	-	-	-	33	0	35	35	35	38	241
Restructuring fees	145	149	233	276	213	277	435	369	544	485	400	360	3,886
Fines and penalties	17	14	0	-	0	1	1	3	1	5	5	5	52
Travel & entertainment	3	3	1	0	0	0	1	0	1	2	2	2	16
Donation	-	-	-	-	-	-	-	-	-	-	-	-	-
Total general and administrative	347	250	400	287	391	353	577	510	671	642	557	531	5,515
Operating Income/(Loss)	(1,457)	(733)	(1,085)	128	(292)	104	121	(1,068)	(217)	(387)	(159)	(373)	(5,420)
Other income/(expense)													
Interest expense	(434)	(392)	(448)	(431)	(437)	(420)	(434)	(420)	(116)	(116)	(116)	(116)	(3,881)
Miscellaneous income/(expense)	11	-	9	(305)	-	(68)	-	-	-	-	-	-	(353)
Gain/loss on asset disposal	200	23	147	-	-	-	-	-	-	-	-	-	369
Debt forgiveness income	-	-	-	-	-	-	-	-	-	-	-	-	-
Insurance proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-
Goodwill writeoff	-	-	-	-	-	-	-	-	-	-	-	-	-
Total other (income)/expense	(224)	(369)	(292)	(736)	(437)	(488)	(434)	(420)	(116)	(116)	(116)	(116)	(3,865)
Net income/(loss)	\$ (1,681)	\$ (1,102)	\$ (1,377)	\$ (609)	\$ (729)	\$ (384)	\$ (313)	\$ (1,488)	\$ (334)	\$ (504)	\$ (275)	\$ (489)	\$ (9,285)
Memo:													
Direct COGS % of Sales	89.3%	84.3%	83.9%	65.4%	68.5%	57.2%	60.4%	81.8%	61.8%	63.5%	67.5%	68.5%	71.1%
Direct Labor % of Sales	21.0%	19.1%	24.6%	19.4%	15.6%	19.9%	16.3%	22.3%	18.9%	19.0%	19.0%	19.0%	19.5%
R&M % of Sales	16.5%	9.5%	11.8%	8.5%	10.8%	10.7%	10.3%	15.8%	10.5%	11.0%	11.0%	11.0%	11.5%
Equipment Lease/Rental % of Sales	1.4%	1.6%	2.0%	0.9%	0.3%	0.4%	0.3%	0.5%	0.3%	0.3%	0.4%	0.4%	0.7%
Gross Profit % of Sales	(20.6%)	(10.8%)	(16.9%)	8.5%	2.4%	11.0%	13.6%	(14.5%)	10.7%	6.6%	7.2%	3.3%	0.2%
EBITDAR	\$ (834)	\$ (107)	\$ (386)	\$ 843	\$ 384	\$ 821	\$ 1,008	\$ (416)	\$ 717	\$ 534	\$ 678	\$ 424	\$ 3,663
EBITDAR % of Sales	(15.5%)	(2.4%)	(9.5%)	17.2%	9.2%	19.8%	19.6%	(10.8%)	16.8%	13.8%	12.3%	8.8%	6.7%
Tons Sold	61,640	51,488	45,061	57,088	44,384	46,156	56,956	43,656	48,393	42,300	62,200	54,200	613,523
Revenue per Ton	\$ 87.30	\$ 86.79	\$ 90.21	\$ 85.71	\$ 93.84	\$ 89.98	\$ 90.15	\$ 88.06	\$ 88.02	\$ 91.37	\$ 88.33	\$ 88.37	\$ 88.85

FM Coal, LLC and subsidiaries
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	Forecast 2021 Q121 Jan-21	Forecast 2021 Q2121 Feb-21	Forecast 2021 Q121 Mar-21	Forecast 2021 Q221 Apr-21	Forecast 2021 Q221 May-21	Forecast 2021 Q221 Jun-21	Forecast 2021 Q321 Jul-21	Forecast 2021 Q321 Aug-21	Forecast 2021 Q321 Sep-21	Forecast 2021 Q421 Oct-21	Forecast 2021 Q421 Nov-21	Forecast 2021 Q421 Dec-21	Forecast 2021 CY21 2021 Total
Revenue													
Alabama Coal Cooperative	\$ 2,975	\$ 2,975	\$ 2,975	\$ 2,975	\$ 2,975	\$ 2,975	\$ 2,975	\$ 2,975	\$ 2,975	\$ 2,975	\$ 2,975	\$ 2,975	\$ 35,702
Other coal sales	1,508	1,691	1,691	1,694	1,755	1,755	1,811	1,872	1,811	1,849	1,971	1,849	21,258
Total revenue	4,483	4,666	4,666	4,669	4,731	4,731	4,786	4,847	4,786	4,824	4,947	4,824	56,959
Direct cost of sales													
Equipment repair & maint - mining	549	572	572	572	579	579	586	594	586	591	606	591	6,978
Payroll expenses - mining	852	931	926	922	930	925	931	938	922	925	943	915	11,060
Fuel	415	432	432	432	438	438	443	448	443	446	458	446	5,269
Explosives	403	420	420	420	426	426	431	436	431	434	445	434	5,126
Highwall miner costs	34	35	35	35	35	35	36	36	36	36	37	36	427
Purchased coal	-	-	-	-	-	-	-	-	-	-	-	-	-
Reclamation	471	490	490	467	473	473	479	485	431	434	445	434	5,571
Washing coal expenses	-	-	-	-	-	-	-	-	-	-	-	-	-
Engineering	48	50	50	50	51	51	52	52	52	52	53	52	616
Equipment lease/rental	16	16	16	16	17	17	17	17	17	17	17	17	199
Miscellaneous mining expense	111	115	115	115	117	117	118	120	118	119	122	119	1,406
Security	3	3	3	3	3	3	3	3	3	3	3	3	39
Electric power	48	50	50	50	51	51	52	52	52	52	53	52	613
Coal analysis	22	23	23	23	24	24	24	24	24	24	25	24	285
Inventory adjustment	-	-	-	-	-	-	-	-	-	-	-	-	-
Total direct cost of sales	2,972	3,138	3,133	3,107	3,143	3,139	3,171	3,206	3,113	3,134	3,208	3,125	37,589
Contribution margin	1,511	1,528	1,533	1,562	1,587	1,592	1,615	1,641	1,672	1,690	1,738	1,700	19,370
Indirect cost of sales													
Freight & delivery	508	679	529	529	536	536	542	549	542	547	561	547	6,605
Royalties	179	187	187	187	189	189	191	194	191	193	198	193	2,278
Depreciation	356	356	356	356	356	356	356	356	356	356	356	356	4,272
Permit costs and amortization	99	103	103	103	104	104	105	107	105	106	109	106	1,253
Taxes	67	70	70	70	71	71	72	73	72	72	74	72	854
Insurance	67	70	70	70	71	71	72	73	72	72	74	72	854
Goodwill amortization	-	-	-	-	-	-	-	-	-	-	-	-	-
Total indirect cost of sales	1,276	1,464	1,314	1,315	1,327	1,327	1,339	1,351	1,339	1,347	1,372	1,347	16,118
Gross profit (loss)	235	64	219	247	260	265	277	289	334	344	366	353	3,253
General and administrative													
Payroll expenses - office	92	88	101	92	92	96	92	96	96	92	96	96	1,133
Office expenses	19	18	21	19	19	20	19	20	20	19	20	20	231
Professional fees	20	19	21	20	20	20	20	20	20	20	20	20	241
Restructuring fees	170	30	-	-	-	-	-	-	-	-	-	-	200
Fines and penalties	4	4	5	4	4	4	4	4	4	4	4	4	52
Travel & entertainment	1	1	1	1	1	1	1	1	1	1	1	1	16
Donation	-	-	-	-	-	-	-	-	-	-	-	-	-
Total general and administrative	306	160	149	136	136	142	136	142	142	136	142	142	1,873
Operating Income/(Loss)	(72)	(96)	70	111	124	122	140	147	191	208	224	211	1,380
Other income/(expense)													
Interest expense	(116)	(111)	(111)	(111)	(110)	(110)	(110)	(105)	(105)	(105)	(99)	(99)	(1,289)
Miscellaneous income/(expense)	-	-	-	-	-	-	-	-	-	-	-	-	-
Gain/loss on asset disposal	-	-	-	-	-	-	-	-	-	-	-	-	-
Debt forgiveness income	46,309	-	-	-	-	-	-	-	-	-	-	-	46,309
Insurance proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-
Goodwill writeoff	(12,303)	-	-	-	-	-	-	-	-	-	-	-	(12,303)
Total other (income)/expense	33,890	(111)	(111)	(111)	(110)	(110)	(110)	(105)	(105)	(105)	(99)	(99)	32,717
Net income/(loss)	\$ 33,818	\$ (207)	\$ (41)	\$ 0	\$ 14	\$ 12	\$ 30	\$ 42	\$ 87	\$ 103	\$ 125	\$ 112	\$ 34,097
Memo:													
Direct COGS % of Sales	66.3%	67.2%	67.1%	66.5%	66.4%	66.3%	66.2%	66.2%	65.1%	65.0%	64.9%	64.8%	66.0%
Direct Labor % of Sales	19.0%	20.0%	19.9%	19.8%	19.7%	19.6%	19.5%	19.4%	19.3%	19.2%	19.1%	19.0%	19.4%
R&M % of Sales	12.3%	12.2%	12.2%	12.2%	12.3%	12.3%	12.3%	12.3%	12.3%	12.3%	12.2%	12.3%	12.2%
Equipment Lease/Rental % of Sales	0.3%	0.3%	0.3%	0.4%	0.4%	0.4%	0.3%	0.3%	0.3%	0.3%	0.4%	0.3%	0.3%
Gross Profit % of Sales	5.2%	1.4%	4.7%	5.3%	5.5%	5.6%	5.8%	6.0%	7.0%	7.1%	7.4%	7.3%	5.7%
EBITDAR	\$ 535	\$ 371	\$ 507	\$ 548	\$ 560	\$ 559	\$ 577	\$ 583	\$ 628	\$ 644	\$ 660	\$ 647	\$ 6,818
EBITDAR % of Sales	11.9%	7.9%	10.9%	11.7%	11.8%	11.8%	12.1%	12.0%	13.1%	13.4%	13.3%	13.4%	12.0%
Tons Sold	49,677	51,616	51,616	51,719	52,366	52,366	52,969	53,616	52,969	53,469	54,762	53,469	630,614
Revenue per Ton	\$ 90.24	\$ 90.40	\$ 90.40	\$ 90.28	\$ 90.34	\$ 90.34	\$ 90.35	\$ 90.40	\$ 90.35	\$ 90.23	\$ 90.33	\$ 90.23	\$ 90.32

FM Coal, LLC and subsidiaries
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(in 000's, except tonnage data)

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	Forecast 2022 Q122 Jan-22	Forecast 2022 Q122 Feb-22	Forecast 2022 Q122 Mar-22	Forecast 2022 Q222 Apr-22	Forecast 2022 Q222 May-22	Forecast 2022 Q222 Jun-22	Forecast 2022 Q322 Jul-22	Forecast 2022 Q322 Aug-22	Forecast 2022 Q322 Sep-22	Forecast 2022 Q422 Oct-22	Forecast 2022 Q422 Nov-22	Forecast 2022 Q422 Dec-22	Forecast 2022 CY22 2022 Total
Revenue													
Alabama Coal Cooperative	\$ 3,029	\$ 3,029	\$ 3,029	\$ 3,029	\$ 3,029	\$ 3,029	\$ 3,029	\$ 3,029	\$ 3,029	\$ 3,029	\$ 3,029	\$ 3,029	\$ 36,353
Other coal sales	1,859	2,053	1,924	1,936	2,001	1,936	2,014	2,014	1,949	2,026	2,026	1,962	23,700
Total revenue	4,888	5,082	4,953	4,966	5,030	4,966	5,043	5,043	4,978	5,056	5,056	4,991	60,053
Direct cost of sales													
Equipment repair & maint - mining	599	623	607	608	616	608	618	618	610	619	619	611	7,356
Payroll expenses - mining	974	1,013	977	979	992	969	985	985	962	977	977	954	11,744
Fuel	452	470	458	459	465	459	466	466	461	468	468	462	5,555
Explosives	440	457	446	447	453	447	454	454	448	455	455	449	5,405
Highwall miner costs	37	38	37	37	38	37	38	38	37	38	38	37	450
Purchased coal	-	-	-	-	-	-	-	-	-	-	-	-	-
Reclamation	440	457	446	447	453	447	454	454	448	455	455	449	5,405
Washing coal expenses	-	-	-	-	-	-	-	-	-	-	-	-	-
Engineering	53	55	54	54	54	54	55	55	54	55	55	54	649
Equipment lease/rental	17	18	17	17	18	17	18	18	17	18	18	17	210
Miscellaneous mining expense	81	84	82	82	83	82	83	83	82	83	83	82	991
Security	3	3	3	3	3	3	3	3	3	3	3	3	41
Electric power	53	55	53	53	54	53	54	54	54	54	54	54	647
Coal analysis	24	25	25	25	25	25	25	25	25	25	25	25	300
Inventory adjustment	-	-	-	-	-	-	-	-	-	-	-	-	-
Total direct cost of sales	3,172	3,298	3,205	3,213	3,255	3,203	3,253	3,253	3,201	3,251	3,251	3,199	38,753
Contribution margin	1,716	1,784	1,748	1,753	1,776	1,763	1,790	1,790	1,777	1,805	1,805	1,792	21,300
Indirect cost of sales													
Freight & delivery	554	576	561	563	570	563	572	572	564	573	573	566	6,806
Royalties	196	203	198	199	201	199	202	202	199	202	202	200	2,402
Depreciation	356	356	356	356	356	356	356	356	356	356	356	356	4,272
Permit costs and amortization	108	112	109	109	111	109	111	111	110	111	111	110	1,321
Taxes	73	76	74	74	75	74	76	76	75	76	76	75	901
Insurance	73	76	74	74	75	74	76	76	75	76	76	75	901
Goodwill amortization	-	-	-	-	-	-	-	-	-	-	-	-	-
Total indirect cost of sales	1,360	1,400	1,373	1,376	1,389	1,376	1,392	1,392	1,378	1,394	1,394	1,381	16,603
Gross profit (loss)	356	384	375	377	387	387	399	399	399	411	411	411	4,697
General and administrative													
Payroll expenses - office	96	92	105	92	100	100	96	105	96	96	100	96	1,174
Office expenses	19	18	21	18	20	20	19	21	19	19	20	19	230
Professional fees	20	19	21	19	20	20	20	21	20	20	20	20	240
Restructuring fees	-	-	-	-	-	-	-	-	-	-	-	-	-
Fines and penalties	4	4	5	4	4	4	4	5	4	4	4	4	52
Travel & entertainment	1	1	1	1	1	1	1	1	1	1	1	1	16
Donation	-	-	-	-	-	-	-	-	-	-	-	-	-
Total general and administrative	140	134	153	134	146	146	140	153	140	140	146	140	1,711
Operating Income/(Loss)	216	251	223	244	241	241	259	246	259	271	265	271	2,985
Other income/(expense)													
Interest expense	(99)	(92)	(92)	(92)	(85)	(85)	(85)	(78)	(78)	(78)	(70)	(70)	(1,001)
Miscellaneous income/(expense)	-	-	-	-	-	-	-	-	-	-	-	-	-
Gain/loss on asset disposal	-	-	-	-	-	-	-	-	-	-	-	-	-
Debt forgiveness income	-	-	-	-	-	-	-	-	-	-	-	-	-
Insurance proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-
Goodwill writeoff	-	-	-	-	-	-	-	-	-	-	-	-	-
Total other (income)/expense	(99)	(92)	(92)	(92)	(85)	(85)	(85)	(78)	(78)	(78)	(70)	(70)	(1,001)
Net income/(loss)	\$ 118	\$ 159	\$ 131	\$ 152	\$ 156	\$ 156	\$ 174	\$ 169	\$ 182	\$ 193	\$ 194	\$ 201	\$ 1,985
Memo:													
Direct COGS % of Sales	64.9%	64.9%	64.7%	64.7%	64.7%	64.5%	64.5%	64.5%	64.3%	64.3%	64.3%	64.1%	64.5%
Direct Labor % of Sales	19.9%	19.9%	19.7%	19.7%	19.7%	19.5%	19.5%	19.5%	19.3%	19.3%	19.3%	19.1%	19.6%
R&M % of Sales	12.2%	12.3%	12.3%	12.3%	12.2%	12.2%	12.2%	12.2%	12.3%	12.2%	12.2%	12.3%	12.3%
Equipment Lease/Rental % of Sales	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.3%	0.4%	0.4%	0.3%	0.3%
Gross Profit % of Sales	7.3%	7.6%	7.6%	7.6%	7.7%	7.9%	7.9%	8.0%	8.1%	8.1%	8.2%	8.2%	7.8%
EBITDAR	\$ 653	\$ 687	\$ 659	\$ 680	\$ 677	\$ 677	\$ 695	\$ 683	\$ 696	\$ 707	\$ 701	\$ 708	\$ 8,223
EBITDAR % of Sales	13.4%	13.5%	13.3%	13.7%	13.5%	13.6%	13.8%	13.5%	14.0%	14.0%	13.9%	14.2%	13.7%
Tons Sold	52,850	54,864	53,522	53,772	54,443	53,772	54,693	54,693	54,022	54,943	54,943	54,272	650,787
Revenue per Ton	\$ 92.49	\$ 92.64	\$ 92.54	\$ 92.35	\$ 92.40	\$ 92.35	\$ 92.21	\$ 92.21	\$ 92.16	\$ 92.02	\$ 92.02	\$ 91.96	\$ 92.28

FM Coal, LLC and subsidiaries

Cash Flow Forecast

(In 000's)

Actual / Forecast -->

Year -->

Period -->

	Actual 2020 Q120 Jan-20	Actual 2020 Q120 Feb-20	Actual 2020 Q120 Mar-20	Actual 2020 Q220 Apr-20	Actual 2020 Q220 May-20	Actual 2020 Q220 Jun-20	Actual 2020 Q320 Jul-20	Actual 2020 Q320 Aug-20	Actual 2020 Q320 Sep-20	Forecast 2020 Q420 Oct-20	Forecast 2020 Q420 Nov-20	Forecast 2020 Q420 Dec-20	Forecast 2020 CY20 2020 Total
Beginning Cash Balance	\$ (494)	\$ 74	\$ 67	\$ 30	\$ 365	\$ 2,593	\$ 2,232	\$ 892	\$ 208	\$ 565	\$ 1,216	\$ 1,819	\$ (494)
Cash receipts													
Alabama Coal Cooperative	2,940	2,806	2,064	3,412	2,827	2,228	3,745	2,350	2,353	2,684	3,726	3,078	34,211
Non-coop sales	3,445	2,084	1,413	1,902	1,396	1,713	1,610	1,650	1,136	1,468	1,555	1,446	20,818
PPP Loan Proceeds	-	-	-	-	3,589	-	-	-	-	-	-	-	3,589
Total cash receipts	6,385	4,890	3,477	5,314	7,812	3,942	5,355	3,999	3,488	4,152	5,281	4,524	58,619
Operating disbursements - direct costs													
Repairs & maintenance	613	807	450	683	615	422	697	553	281	447	425	604	6,598
Payroll expenses - mining	1,300	1,225	994	866	862	718	1,293	828	669	678	963	840	11,237
Fuel	741	816	441	438	518	492	682	532	487	299	271	508	6,223
Explosives	487	432	231	390	545	409	440	436	383	348	494	431	5,026
Highwall miner costs	449	674	246	418	405	81	584	459	196	290	330	287	4,420
Purchased coal	87	23	-	-	-	-	-	-	-	-	-	-	110
Reclamation	196	160	15	162	145	103	48	68	10	259	199	181	1,545
Washing coal expenses	70	53	-	80	53	53	43	51	55	-	-	-	405
Engineering	104	57	53	171	80	55	90	74	1	46	42	59	833
Equipment lease/rental	56	35	36	18	-	-	-	-	-	18	14	14	189
Miscellaneous mining expense	1	60	15	49	168	179	142	26	23	87	97	88	934
Security	0	32	-	15	8	5	7	-	-	4	3	3	76
Other direct costs	108	81	29	27	46	46	60	48	30	63	51	77	668
Capital lease payments	96	-	-	99	152	76	76	-	-	-	-	-	498
Total operating disbursements - direct costs	4,308	4,455	2,510	3,336	3,623	2,639	4,162	3,075	2,135	2,539	2,890	3,091	38,762
Operating disbursements - indirect costs													
Freight & delivery	1,017	625	529	558	495	410	517	527	371	464	549	575	6,636
Royalties	183	191	113	123	301	190	228	246	-	150	136	194	2,055
Permit costs	27	17	19	-	505	175	54	-	-	38	5	40	880
Taxes	115	98	13	205	46	41	93	53	55	70	58	82	931
Insurance	52	56	31	104	192	138	66	43	32	59	58	82	912
Total operating disbursements - indirect costs	1,393	987	705	991	1,539	954	958	869	458	781	806	974	11,415
Other operating disbursements													
Payroll expenses - office	14	29	108	96	96	80	144	92	74	89	89	97	1,007
Office expenses	36	62	17	41	32	31	54	28	22	16	17	20	374
Professional fees	-	18	-	78	-	24	86	116	-	0	35	35	391
Restructuring fees	162	149	329	438	202	233	550	427	-	-	544	485	3,521
Other office expenses	4	4	24	-	-	-	-	-	-	2	7	7	48
Bankruptcy claim payments	-	-	-	-	-	-	-	-	-	100	100	-	200
Other bankruptcy payments	-	-	-	-	-	-	-	-	-	32	-	-	32
Total other operating disbursements	216	263	478	653	330	368	834	664	96	239	791	643	5,573
Cash flows from operations	467	(814)	(215)	335	2,320	(20)	(599)	(608)	799	593	795	(184)	2,869
Non-operating receipts/(disbursements)													
Senior secured debt service payments	-	-	-	-	-	-	-	-	(116)	(117)	(116)	(116)	(465)
Highwall Miner Loan payments	(76)	-	-	-	(92)	(96)	(99)	(76)	(76)	(76)	(76)	(76)	(742)
PPP Loan repayments	-	-	-	-	-	-	-	-	-	-	-	-	-
Advances from/(to) affiliated entity - ESM	-	850	-	-	-	-	-	-	-	-	-	-	850
Miscellaneous income/(expense)	176	(42)	178	-	-	-	-	-	-	-	-	-	312
Proceeds from sale of equipment	-	-	-	-	-	-	-	-	-	970	330	200	1,500
Capital expenditures	-	-	-	-	-	(246)	(642)	-	(250)	(720)	(330)	(200)	(2,387)
Total non-operating receipts/(disbursements)	100	808	178	-	(92)	(342)	(741)	(76)	(442)	58	(192)	(192)	(933)
Net cash flow	568	(7)	(37)	335	2,228	(361)	(1,340)	(684)	357	650	603	(376)	1,936
Ending cash balance	\$ 74	\$ 67	\$ 30	\$ 365	\$ 2,593	\$ 2,232	\$ 892	\$ 208	\$ 565	\$ 1,216	\$ 1,819	\$ 1,442	\$ 1,442

FM Coal, LLC and subsidiaries

Cash Flow Forecast

(In 000's)

Actual / Forecast -->

Year -->

Period -->

	Forecast 2021 Q121 Jan-21	Forecast 2021 Q121 Feb-21	Forecast 2021 Q121 Mar-21	Forecast 2021 Q221 Apr-21	Forecast 2021 Q221 May-21	Forecast 2021 Q221 Jun-21	Forecast 2021 Q321 Jul-21	Forecast 2021 Q321 Aug-21	Forecast 2021 Q321 Sep-21	Forecast 2021 Q421 Oct-21	Forecast 2021 Q421 Nov-21	Forecast 2021 Q421 Dec-21	Forecast 2021 CY21 2021 Total
Beginning Cash Balance	\$ 1,442	\$ 960	\$ 525	\$ 458	\$ 893	\$ 948	\$ 1,035	\$ 817	\$ 927	\$ 1,046	\$ 788	\$ 1,034	\$ 1,442
Cash receipts													
Alabama Coal Cooperative	3,850	2,741	2,741	3,344	2,741	2,741	3,344	2,741	2,741	3,344	2,741	2,741	35,806
Non-coop sales	1,477	1,599	1,691	1,693	1,725	1,755	1,783	1,841	1,841	1,830	1,910	1,910	21,056
PPP Loan Proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-
Total cash receipts	5,327	4,340	4,432	5,036	4,465	4,496	5,127	4,582	4,582	5,174	4,651	4,651	56,862
Operating disbursements - direct costs													
Repairs & maintenance	527	549	572	572	572	579	579	586	594	586	591	606	6,913
Payroll expenses - mining	1,179	859	855	851	858	854	859	866	851	853	871	1,267	11,023
Fuel	443	415	432	432	432	438	438	443	448	443	446	458	5,266
Explosives	403	420	420	420	426	426	431	436	431	434	445	434	5,126
Highwall miner costs	34	35	35	35	35	35	36	36	36	36	37	36	427
Purchased coal	-	-	-	-	-	-	-	-	-	-	-	-	-
Reclamation	440	431	471	490	490	467	473	473	479	485	431	434	5,562
Washing coal expenses	-	-	-	-	-	-	-	-	-	-	-	-	-
Engineering	52	48	50	50	50	51	51	52	52	52	52	53	615
Equipment lease/rental	19	17	16	16	16	16	17	17	17	17	17	17	201
Miscellaneous mining expense	125	109	111	115	115	115	117	117	118	120	118	119	1,398
Security	4	3	3	3	3	3	3	3	3	3	3	3	39
Other direct costs	76	70	73	74	74	74	75	75	76	76	76	77	895
Capital lease payments	-	-	-	-	-	-	-	-	-	-	-	-	-
Total operating disbursements - direct costs	3,301	2,956	3,036	3,058	3,072	3,059	3,078	3,104	3,105	3,105	3,087	3,505	37,467
Operating disbursements - indirect costs													
Freight & delivery	508	679	529	529	536	536	542	549	542	547	561	547	6,605
Royalties	169	179	187	187	187	189	189	191	194	191	193	198	2,254
Permit costs	25	18	22	22	22	24	24	25	26	25	26	28	287
Taxes	222	67	70	70	70	71	71	72	73	72	72	74	1,004
Insurance	72	67	70	70	70	71	71	72	73	72	72	74	854
Total operating disbursements - indirect costs	996	1,011	878	878	885	891	897	909	908	907	924	921	11,004
Other operating disbursements													
Payroll expenses - office	128	81	93	85	85	89	85	89	89	85	89	134	1,132
Office expenses	20	21	19	18	21	19	19	20	19	20	20	19	233
Professional fees	38	20	19	21	20	20	20	20	20	20	20	20	258
Restructuring fees	400	360	170	30	-	-	-	-	-	-	-	-	960
Other office expenses	7	6	5	6	6	6	6	6	6	6	6	6	69
Bankruptcy claim payments	455	-	-	-	-	-	-	-	-	-	-	-	455
Other bankruptcy payments	168	-	-	20	-	-	-	-	-	-	-	-	188
Total other operating disbursements	1,214	488	306	181	131	133	130	134	134	131	134	179	3,295
Cash flows from operations	(185)	(114)	212	919	378	413	1,021	435	435	1,031	506	45	5,096
Non-operating receipts/(disbursements)													
Senior secured debt service payments	(116)	(111)	(111)	(282)	(110)	(110)	(1,024)	(105)	(105)	(1,133)	(99)	(99)	(3,402)
Highwall Miner Loan payments	(76)	(76)	(76)	(76)	(76)	(76)	(76)	(76)	(66)	-	-	-	(672)
PPP Loan repayments	-	-	-	-	-	-	-	-	-	-	-	-	-
Advances from/(to) affiliated entity - ESM	-	-	-	-	-	-	-	-	-	-	-	-	-
Miscellaneous income/(expense)	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of equipment	-	-	-	-	-	-	-	-	-	-	-	-	-
Capital expenditures	(106)	(134)	(93)	(127)	(137)	(140)	(140)	(144)	(146)	(157)	(161)	(165)	(1,649)
Total non-operating receipts/(disbursements)	(298)	(320)	(279)	(484)	(323)	(326)	(1,239)	(324)	(316)	(1,290)	(260)	(264)	(5,723)
Net cash flow	(482)	(435)	(67)	435	55	87	(218)	110	119	(259)	247	(218)	(626)
Ending cash balance	\$ 960	\$ 525	\$ 458	\$ 893	\$ 948	\$ 1,035	\$ 817	\$ 927	\$ 1,046	\$ 788	\$ 1,034	\$ 816	\$ 816

FM Coal, LLC and subsidiaries

Cash Flow Forecast

(In 000's)

Actual / Forecast -->

Year -->

Period -->

	Forecast 2022 Q121 Jan-22	Forecast 2021 Q121 Feb-22	Forecast 2021 Q121 Mar-22	Forecast 2021 Q221 Apr-22	Forecast 2021 Q221 May-22	Forecast 2021 Q221 Jun-22	Forecast 2021 Q321 Jul-22	Forecast 2021 Q321 Aug-22	Forecast 2021 Q321 Sep-22	Forecast 2021 Q421 Oct-22	Forecast 2021 Q421 Nov-22	Forecast 2021 Q421 Dec-22	Forecast 2022 CY22 2022 Total
Beginning Cash Balance	\$ 816	\$ 723	\$ 961	\$ 1,240	\$ 399	\$ 670	\$ 955	\$ 592	\$ 885	\$ 693	\$ 425	\$ 614	\$ 816
Cash receipts													
Alabama Coal Cooperative	3,800	2,795	2,795	3,398	2,795	2,795	3,398	2,795	2,795	3,398	2,795	2,795	36,353
Non-coop sales	1,854	1,956	1,988	1,930	1,969	1,969	1,975	2,014	1,981	1,988	2,026	1,994	23,644
PPP Loan Proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-
Total cash receipts	5,654	4,751	4,783	5,328	4,764	4,764	5,373	4,809	4,776	5,386	4,821	4,789	59,997
Operating disbursements - direct costs													
Repairs & maintenance	591	599	623	607	608	616	608	618	618	488	743	619	7,338
Payroll expenses - mining	899	935	902	1,356	916	895	909	909	1,332	902	902	881	11,735
Fuel	446	452	470	458	459	465	459	466	466	461	468	468	5,539
Explosives	440	457	446	447	453	447	454	454	448	455	455	449	5,405
Highwall miner costs	37	38	37	37	38	37	38	38	37	38	38	37	450
Purchased coal	-	-	-	-	-	-	-	-	-	-	-	-	-
Reclamation	445	434	440	457	446	447	453	447	454	454	448	455	5,380
Washing coal expenses	-	-	-	-	-	-	-	-	-	-	-	-	-
Engineering	52	53	55	54	54	54	54	55	55	54	55	55	647
Equipment lease/rental	17	17	17	18	17	17	18	17	18	18	17	18	209
Miscellaneous mining expense	122	119	81	84	82	82	83	82	83	83	82	83	1,066
Security	3	3	3	3	3	3	3	3	3	3	3	3	41
Other direct costs	77	77	79	79	78	79	79	79	80	79	79	80	944
Capital lease payments	-	-	-	-	-	-	-	-	-	-	-	-	-
Total operating disbursements - direct costs	3,129	3,184	3,152	3,600	3,154	3,143	3,157	3,168	3,594	3,034	3,290	3,148	38,755
Operating disbursements - indirect costs													
Freight & delivery	554	576	561	563	570	563	572	572	564	573	573	566	6,806
Royalties	193	196	203	198	199	201	199	202	202	199	202	202	2,395
Permit costs	26	27	31	28	29	30	29	30	30	29	31	31	352
Taxes	222	73	76	74	74	75	74	76	76	75	76	76	1,048
Insurance	72	73	76	74	74	75	74	76	76	75	76	76	898
Total operating disbursements - indirect costs	1,067	945	948	938	946	945	948	955	948	951	958	950	11,500
Other operating disbursements													
Payroll expenses - office	89	85	97	127	93	93	89	97	133	89	93	89	1,170
Office expenses	20	20	19	18	21	18	20	20	19	21	19	19	231
Professional fees	20	20	19	21	19	20	20	20	21	20	20	20	241
Restructuring fees	-	-	-	-	-	-	-	-	-	-	-	-	-
Other office expenses	6	6	5	6	5	6	6	6	6	6	6	6	68
Bankruptcy claim payments	-	-	-	-	-	-	-	-	-	-	-	-	-
Other bankruptcy payments	-	-	-	-	-	-	-	-	-	-	-	-	-
Total other operating disbursements	135	129	139	172	137	137	135	141	179	134	137	134	1,710
Cash flows from operations	1,323	492	543	618	526	538	1,133	544	56	1,267	437	556	8,033
Non-operating receipts/(disbursements)													
Senior secured debt service payments	(1,254)	(92)	(92)	(1,294)	(85)	(85)	(1,326)	(78)	(78)	(1,361)	(70)	(70)	(5,883)
Highwall Miner Loan payments	-	-	-	-	-	-	-	-	-	-	-	-	-
PPP Loan repayments	-	-	-	-	-	-	-	-	-	-	-	-	-
Advances from/(to) affiliated entity - ESM	-	-	-	-	-	-	-	-	-	-	-	-	-
Miscellaneous income/(expense)	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from sale of equipment	-	-	-	-	-	-	-	-	-	-	-	-	-
Capital expenditures	(162)	(163)	(172)	(165)	(170)	(169)	(169)	(174)	(171)	(174)	(177)	(175)	(2,041)
Total non-operating receipts/(disbursements)	(1,415)	(255)	(264)	(1,459)	(255)	(254)	(1,495)	(251)	(248)	(1,535)	(247)	(245)	(7,923)
Net cash flow	(93)	237	279	(841)	271	284	(362)	293	(192)	(268)	190	311	110
Ending cash balance	\$ 723	\$ 961	\$ 1,240	\$ 399	\$ 670	\$ 955	\$ 592	\$ 885	\$ 693	\$ 425	\$ 614	\$ 926	\$ 926

EXHIBIT E

FM Coal, LLC's Corporate Organizational Structure

